

Jim
Pendergast/DC/USEPA/US

11/03/2010 08:16 AM

To Brian Frazer

cc

bcc

Subject Fw: REMINDER: OWOW Action Matrix Updates by COB
Wednesday

Brian -- Who sends these to Tanya? Just asking in case I have questions. Jim

----- Forwarded by Jim Pendergast/DC/USEPA/US on 11/03/2010 08:16 AM -----

From: Tanya Code/DC/USEPA/US
To: Jim Pendergast/DC/USEPA/US@EPA
Date: 11/02/2010 05:46 PM
Subject: Re: REMINDER: OWOW Action Matrix Updates by COB Wednesday

Thanks for the prompt response Jim. Just as FYI, the other items that I receive from WD each week are an updated MTM Hot Topic paper and ECP matrix. I've attached what was submitted last week for reference. These get sent to a whole cast of characters...OGC, Greg Peck, Ann Campbell in the AO, to name a few.



Mining_ECP_Permit Tracking_10-28-10.xls



AA hot topics-MTM_10-28-10.doc

ATTACHMENTS REDACTED - DELIBERATIVE

Tanya Code
Special Assistant
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
Tel: 202.566.1063
Fax: 202.566.1147

Jim Pendergast

[We're up to date on the CWA Jurisdiction and Fil...](#)

11/02/2010 05:42:36 PM

From: Jim Pendergast/DC/USEPA/US
To: Tanya Code/DC/USEPA/US@EPA
Date: 11/02/2010 05:42 PM
Subject: Re: REMINDER: OWOW Action Matrix Updates by COB Wednesday

We're up to date on the CWA Jurisdiction and Fill Rules.

Tanya Code

[Please send me updates to the OWOW Action...](#)

11/02/2010 05:34:44 PM

From: Tanya Code/DC/USEPA/US
To: OWOW Managers Group
Cc: Betsy Valente/DC/USEPA/US@EPA, Brian Rappoli/DC/USEPA/US@EPA, Chris Laabs/DC/USEPA/US@EPA, Chris Lewicki/DC/USEPA/US@EPA, Christine Ruf/DC/USEPA/US@EPA, Clay Miller/DC/USEPA/US@EPA, Donna Downing/DC/USEPA/US@EPA, Hazel Groman/DC/USEPA/US@EPA, Kathryn Benz/DC/USEPA/US@EPA, Ruth Chemerys/DC/USEPA/US@EPA, Sonia Kassambara/DC/USEPA/US@EPA, Stacie Craddock/DC/USEPA/US@EPA, Yasmin Yorker/DC/USEPA/US@EPA, Rosaura Conde/DC/USEPA/US@EPA, menchu-c martinez/DC/USEPA/US@EPA, Erin Flannery/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA, Brian Topping/DC/USEPA/US@EPA, Kate Perry/DC/USEPA/US@EPA, Robert Gunter/DC/USEPA/US@EPA, Tomeka Nelson/DC/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA
Date: 11/02/2010 05:34 PM

Subject: REMINDER: OWOW Action Matrix Updates by COB Wednesday



Please send me updates to the OWOW Action Matrix by COB Wednesday.

[attachment "OWOW Action Matrix 11-1-10.doc" deleted by Jim Pendergast/DC/USEPA/US]

Thanks,

Tanya Code
Special Assistant
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
Tel: 202.566.1063
Fax: 202.566.1147

Palmer Hough/DC/USEPA/US

To Christopher Hunter

11/03/2010 08:51 AM

cc

bcc

Subject Fw: Spruce Mitigation language

Chris:

So here are my edits to the Mitigation Appendix, including added Julia's new table and paragraph. This is also saved in the FD working files on the G drive.

Please let me know what version of the FD you would like we to review and edit.

Thanks, Palmer



ATTACHMENT REDACTED - DELIBERATIVE

Appendix 2 f: a: 102210_pfh edits.doc

----- Forwarded by Palmer Hough/DC/USEPA/US on 11/03/2010 08:49 AM -----

From: Julia McCarthy/R8/USEPA/US
To: Palmer Hough/DC/USEPA/US@EPA
Cc: Brian Topping/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA
Date: 11/02/2010 04:17 PM
Subject: Re: Spruce Mitigation language

Looks good to me! Thanks, Palmer!

Julia McCarthy
on detail to USEPA Headquarters
Office of Wetlands, Oceans and Watersheds
(202) 566-1660
mccarthy.julia@epa.gov

A land ethic, then, reflects the existence of an ecological conscience, and this in turn reflects a connection of individual responsibility for the health of the land. Health is the capacity of the land for self-renewal. Conservation is our effort to understand and preserve this capacity. ~Aldo Leopold

Palmer Hough

Julia: I've inserted this material into the Mitigatio...

11/02/2010 02:59:43 PM

From: Palmer Hough/DC/USEPA/US
To: Julia McCarthy/R8/USEPA/US@EPA
Cc: Brian Topping/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA
Date: 11/02/2010 02:59 PM
Subject: Re: Spruce Mitigation language

Julia:

I've inserted this material into the Mitigation Appendix on page 9. Let me know if you think it works.

-Palmer

[attachment "Appendix 3 final 102210_pfh edits.doc" deleted by Julia McCarthy/R8/USEPA/US]

Julia McCarthy

Hey Brian and Palmer (b) (5)

10/27/2010 07:24:16 PM

From: Julia McCarthy/R8/USEPA/US
To: Brian Topping/DC/USEPA/US@EPA, Palmer Hough/DC/USEPA/US@EPA
Cc: Christopher Hunter/DC/USEPA/US@EPA
Date: 10/27/2010 07:24 PM
Subject: Spruce Mitigation language

Hey Brian and Palmer,

(b) (5)



Let me know if you have any questions.

Cheers,

Julia

[attachment "Sediment Ditches.doc" deleted by Palmer Hough/DC/USEPA/US]

Julia McCarthy

on detail to USEPA Headquarters

Office of Wetlands, Oceans and Watersheds

(202) 566-1660

mccarthy.julia@epa.gov

A land ethic, then, reflects the existence of an ecological conscience, and this in turn reflects a connection of individual responsibility for the health of the land. Health is the capacity of the land for self-renewal. Conservation is our effort to understand and preserve this capacity. ~Aldo Leopold

Christopher
Hunter/DC/USEPA/US
11/03/2010 09:48 AM

To Jim Pendergast
cc
bcc
Subject Re: Fw: CMS For Concurrence - Christopher Hunter -
AX-10-001-7229



ATTACHMENT REDACTED - DELIBERATIVE

AX-10-001-7229 haus_2.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

Jim Pendergast

Chris -- I have a CMS glitch that won't let me op...

11/03/2010 09:45:00 AM

From: Jim Pendergast/DC/USEPA/US
To: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/03/2010 09:45 AM
Subject: Fw: CMS For Concurrence - Christopher Hunter - AX-10-001-7229

Chris -- I have a CMS glitch that won't let me open the attachments. Can you send me via email the response, and then I can review it. Jim

----- Forwarded by Jim Pendergast/DC/USEPA/US on 11/03/2010 09:44 AM -----

From: cmsadmin@epa.gov
To: Jim Pendergast/DC/USEPA/US@EPA
Date: 11/03/2010 09:34 AM
Subject: CMS For Concurrence - Christopher Hunter - AX-10-001-7229

The response for control AX-10-001-7229 has been sent to you for concurrence on 11/3/10 9:34 AM. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-10-001-7229
Control Subject: Student Letter - Mountaintop mining
From: Haus, William

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS.Information@epa.gov.

Matthew
Klasen/DC/USEPA/US
11/03/2010 03:39 PM

To: Gregory Peck
cc
bcc
Subject: Fw: Premier Elkhorn letter

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

----- Forwarded by Matthew Klasen/DC/USEPA/US on 11/03/2010 03:38 PM -----

From: Eric Somerville/R4/USEPA/US
To: Timothy Landers/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA
Date: 11/02/2010 06:09 PM
Subject: Premier Elkhorn letter

the MSWord files

-----Forwarded by Eric Somerville/R4/USEPA/US on 11/02/2010 06:07PM -----

To: Eric Somerville/R4/USEPA/US@EPA
From: Wanda Hudson/R4/USEPA/US
Date: 11/02/2010 05:31PM
Subject: Re: recipients of the Premier Elkhorn letter

Here is the final letter & enclosure...gotta run!

(See attached file: PremElkLtrRevised.doc) (See attached file: PremElk Enclosure 1.doc) (See attached file: PremElk Enclosure 2.doc)

*Wanda E. Hudson
Division Secretary
EPA - Water Protection Division
61 Forsyth Street SW
Atlanta, Georgia 30303-8960
Phone: 404.562.9351
Fax: 404.562.9318*

Eric Somerville---11/02/2010 02:55:27 PM---Recipients of the pending Premier Elkhorn letter should include the following: Todd Hagman: todd.e.

From: Eric Somerville/R4/USEPA/US
To: Wanda Hudson/R4/USEPA/US@EPA
Date: 11/02/2010 02:55 PM
Subject: recipients of the Premier Elkhorn letter

Recipients of the pending Premier Elkhorn letter should include the following:

Todd Hagman:
Jim Townsend:
Lee Anne Devine:
Justin Branham:
Joe Blackburn:
Lee Andrews:
Carl Campbell: carl.campbell@ky.gov
Bruce Scott: bruce.scott@ky.gov
Sandy Gruzesky: sandy.gruzesky@ky.gov

(b) (6)

p.s. I just noted on a read-only version of the letter on the G:\ drive, that Table 1 in the middle of the letter is split onto two pages. This should clearly not be the case, but I am uncertain whether Cassie caught that before bring the hard copy to Jim's office. I have also not been able to reach Phil Mancusi since first alerting him of the letter over an hour ago, so I do not know if he has or will have any changes to make.

FYI- the letter itself is on the G:\ drive here:

G:\1 WCOB\2 - SMT\Coal Mining ECP\2. MOU ECP Permits - PreNotification & 60 Days Started\LRL 2007-594 Premier Elkhorn 898-0800\CWA 404_EPA review\PremElk letter R4 & HQ_11.2.2010.doc

-Eric

Eric Somerville
U.S. Environmental Protection Agency, Region 4
Wetlands, Coastal & Oceans Branch
c/o SEDS (A100-13)
980 College Station Road
Athens, GA 30605-2720
tel 706.355.8514
fax 706.355.8744
somerville.eric@epa.gov



PremElkLtrRevised.doc



PremElk Enclosure 1.doc



PremElk Enclosure 2.doc

ATTACHMENTS REDACTED - DELIBERATIVE

Nancy Stoner/DC/USEPA/US

11/03/2010 03:47 PM

To Cynthia Giles-AA

cc

bcc

Subject Fw: Can I get the final Elkhorn letter?

here you are -- (b) (5)

----- Forwarded by Nancy Stoner/DC/USEPA/US on 11/03/2010 03:46 PM -----

From: Gregory Peck/DC/USEPA/US
To: Nancy Stoner/DC/USEPA/US@EPA
Date: 11/03/2010 03:41 PM
Subject: Re: Can I get the final Elkhorn letter?

Nancy - here's the letter. (b) (5). Here's the final draft. It includes language recommending that the Corps prepare an EIS.



PremElkLtrRevised.doc



PremElk Enclosure 1.doc



PremElk Enclosure 2.doc

ATTACHMENTS REDACTED - DELIBERATIVE

Nancy Stoner

Cynthia Giles wants it. thx

11/03/2010 02:42:59 PM

From: Nancy Stoner/DC/USEPA/US
To: Gregory Peck/DC/USEPA/US@EPA
Date: 11/03/2010 02:42 PM
Subject: Can I get the final Elkhorn letter?

Cynthia Giles wants it. thx

Julia McCarthy/R8/USEPA/US

To Christopher Hunter, Ross Geredien

11/03/2010 05:00 PM

cc

bcc

Subject Spruce macroinvertebrate section

Chris and Ross,

Here is what I've accomplished with the macroinvertebrate section today. I still have to add a paragraph on selenium (all references are at the office), but I've left a placeholder for it. Please take a quick look and let me know if this version might live up to the vision. Also, please note, I was working on an excerpt from the original FD to make it easier...

Cheers,

Julia

Julia McCarthy (on detail)
Life/Environmental Scientist
U.S. Environmental Protection Agency
Office of Wetlands, Oceans and Watersheds
Wetlands Division
Washington, DC
(202) 566-1660
mccarthy.julia@epa.gov

Success is like wrestling a gorilla. You don't quit when you're tired. You quit when the

gorilla is tired. ~Robert Strauss  - Spruce_Macro.doc

ATTACHMENT REDACTED - DELIBERATIVE

Tom Lavery/DC/USEPA/US
11/03/2010 10:14 PM

To "Sharmin Syed", "David Hair", "Martha Segall", "Sarita Hoyt"
cc
bcc
Subject Fw: attorney client product. Confidential

Please coordinate with scott/marcus on this
Linda Boornazian

----- Original Message -----

From: Linda Boornazian
Sent: 11/03/2010 06:28 PM EDT
To: Marcus Zobrist; Js Wilson; Randy Hill
Cc: Tom Lavery
Subject: attorney client product.

(b) (5)
Deliberative
Process and
Attorney-Client
Privilege

Linda Boornazian
Division Director, Water Permits Division
Office of Wastewater Management
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code: 4203M,
Room 7420A, EPA East

Phone: 202-564-9545
Fax: 202-564-6392

----- Forwarded by Linda Boornazian/DC/USEPA/US on 11/03/2010 06:22 PM -----

From: Randy Hill/DC/USEPA/US
To: Linda Boornazian/DC/USEPA/US@EPA, Marcus Zobrist/DC/USEPA/US@EPA
Date: 11/03/2010 05:29 PM
Subject: Fw: Discussion Document for 5:00 MTM Conference Call (IGNORE REQUEST - Document Found)
- THANKS

Randy Hill
Deputy Director
Office of Wastewater Management
U.S. EPA (4201M)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

(202) 564-0748
(202) 501-2338 (FAX)
hill.randy@epa.gov

Confidential: This transmission may contain deliberative, attorney-client, attorney work product or otherwise privileged material. Do not release under FOIA without appropriate review. If this message has been received by you in error, you are instructed to delete this message from your machine and all storage media whether electronic or hard copy.

----- Forwarded by Randy Hill/DC/USEPA/US on 11/03/2010 05:29 PM -----

From: Martha Workman/DC/USEPA/US
To: hanlon.jim@epa.gov, Randy Hill/DC/USEPA/US@EPA, Tom Laverty/DC/USEPA/US@EPA, Louis Eby/DC/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA
Date: 11/03/2010 04:38 PM
Subject: Fw: Discussion Document for 5:00 MTM Conference Call (IGNORE REQUEST - Document Found)
- THANKS

Martha Lee Workman
Program Specialist/Staff Assistant
Office of Water (4101M)
Immediate Office
1200 Pennsylvania Avenue., NW
Washington, DC 20460
Cubicle 3219C EPA East
Telephone: (202) 564-3774
Fax: (202) 564-0488
E-mail: workman.martha@epa.gov

----- Forwarded by Martha Workman/DC/USEPA/US on 11/03/2010 04:37 PM -----

From: Jim Giattina/R4/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA, Georgia Bednar/DC/USEPA/US@EPA, Gwendolyn KeyesFleming/R4/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@EPA, Shawn Garvin/R3/USEPA/US@EPA, Ann Campbell/DC/USEPA/US@EPA, Beth Zelenski/DC/USEPA/US@EPA, Colleen Flaherty/DC/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA, Janice Donlon/R3/USEPA/US@EPA, Jordan Dorfman/DC/USEPA/US@EPA, Martha Workman/DC/USEPA/US@EPA, Nena Shaw/DC/USEPA/US@EPA, Sharan Sitton/R4/USEPA/US@EPA, Venu Ghanta/DC/USEPA/US@EPA
Date: 11/03/2010 04:11 PM
Subject: Discussion Document for 5:00 MTM Conference Call



ATTACHMENT REDACTED - DELIBERATIVE

Surface Mining 402 Permit Optional Implementation Approach 11.3.10.doc

**Jessica
Martinsen/R3/USEPA/US**

11/04/2010 10:23 AM

To Mark Douglas

cc

bcc

Subject Doe Branch

Mark,

Here's the current version of the comment letter. I'm going to go back through it now. Please take a careful look and make sure that it reads well and nothing is really missing after our conversations yesterday and with Stef's comments. I want to send this to HQ today. One area that needs to be doubled checked by you is the baseline conductivity section. You said something different to Bill Early yesterday, I think, than how it's represented in the letter. Also, let's check on the Levisa Fork TMDL stuff.



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch EPA Comment Draft 11-3-10.doc

Jessica Martinsen
U.S. EPA Region III
Office of Environmental Programs
1650 Arch St. (3EA30)
Philadelphia, PA 19103
215-814-5144 (office)
215-814-2783 (fax)

**Jessica
Martinsen/R3/USEPA/US**

11/04/2010 01:14 PM

To Christopher Hunter, Cliff Rader

cc Jeffrey Lapp, Mark Douglas

bcc

Subject Draft Doe Branch Surface Mine comment letter

Gentlemen:

You will find attached Region 3's current draft 3a comment letter for the Doe Branch Surface Mine located in Dickenson County, Virginia for HQ review and coordination. It is a large surface mine (5 VFs and ~16,000 lf of stream impacts). In addition to the 404(q) language we have also included NEPA language in the closing paragraph. It is a long letter, but still follows the previously accepted format. The project has been briefed to our DRA and the draft letter has been provided to our front office for review as well. We welcome your comments and suggested changes. I understand that this letter needs to "move up the chain", however I do respectfully request that we receive the HQ approved draft back by Wednesday Nov. 10th.



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch EPA Comment Draft 11-4-10.doc

Jessica Martinsen
U.S. EPA Region III
Office of Environmental Programs
1650 Arch St. (3EA30)
Philadelphia, PA 19103
215-814-5144 (office)
215-814-2783 (fax)

Amy Caprio/R3/USEPA/US

11/04/2010 01:16 PM

To Michael Dunn, John Pomponio, Jeffrey Lapp, Jon Capacasa,
Evelyn MacKnight, Francisco Cruz

cc

bcc

Subject Discussion Document for MTM Call on 11.5.10

Per your request Mike

Amy

Executive Assistant
U.S. EPA Region III
1650 Arch Street (3DA00)
Philadelphia, PA 19103

p: 215.814.2156
e: caprio.amy@epa.gov

----- Forwarded by Amy Caprio/R3/USEPA/US on 11/04/2010 01:15 PM -----

From: Shawn Garvin/R3/USEPA/US
To: Amy Caprio/R3/USEPA/US@EPA
Date: 11/04/2010 01:14 PM
Subject: Fw: Discussion Document for 5:00 MTM Conference Call
Sent by: Janice Donlon

----- Forwarded by Janice Donlon/R3/USEPA/US on 11/04/2010 01:13 PM -----

Discussion Document for 5:00 MTM Conference Call

Jim Giattina to: Bob Sussman, Georgia Bednar, Gwendolyn KeyesFleming,
Nancy Stoner, Shawn Garvin, Ann Campbell, Beth Zelenski,
Colleen Flaherty, Stan Meiburg, Janice Donlon, Jordan
Dorfman, Martha Workman, Nena Shaw, Sharan Sitton,
Venu Ghanta

11/03/2010 04:11 PM



Surface Mining 402 Permit Optional Implementation Approach 11.3.10.doc

**Christopher
Hunter/DC/USEPA/US**
11/04/2010 02:55 PM

To: Brian Frazer
cc: Ross Geredien, Marcel Tchaou, Brian Topping
bcc:
Subject: draft 3(a) letter from Doe Branch Surface Mine

Brian,
we've received the Region 3 draft letter for the non-ECP Doe Branch Mine in VA. The Region needs HQ comments back by Wednesday November 10. I've reviewed and included some suggested edits, but overall I think the letter looks fine. If you agree, please forward to OFA (Cliff), OGC (Mike Lee and Kevin), and OW.

Chris

Basic information on the mine:

- 5 valley fills
- 16,000 lf of stream impacts
- 2 acres of wetland impacts
- approximately 60% remining
- Conductivity on-site is generally below 500, downstream is generally above 500



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch EPA Comment Draft 11-4-10 - ch.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

Tom Lavery/DC/USEPA/US
11/04/2010 03:29 PM

To David Hair, Js Wilson, Marcus Zobrist, Sharmin Syed,
Colleen Forestieri
cc Martha Segall, Michelle Schutz
bcc
Subject Fw: R4 proposed NPDES approach in light of NMA

folks,

are we familiar with the attachment, at least in some form?

(b) (5)

Let's discuss when we find a spare moment

thanks

Tom

----- Forwarded by Tom Lavery/DC/USEPA/US on 11/04/2010 03:25 PM -----

From: Stefania Shamet/R3/USEPA/US
To: Kevin Minoli/DC/USEPA/US@EPA, Karyn Wendelowski/DC/USEPA/US@EPA, Tom Lavery/DC/USEPA/US@EPA, Marcus Zobrist/DC/USEPA/US@EPA, Js Wilson/DC/USEPA/US@EPA
Date: 11/04/2010 02:48 PM
Subject: R4 proposed NPDES approach in light of NMA

It wasn't clear to me that you received this, so sending in case you haven't. (b) (5)

(b) (5)

----- Forwarded by Stefania Shamet/R3/USEPA/US on 11/04/2010 02:45 PM -----

From: Michael Dunn/R3/USEPA/US
To: Stefania Shamet/R3/USEPA/US@EPA
Date: 11/04/2010 01:23 PM
Subject: Fw: Discussion Document for MTM Call on 11.5.10

(b) (5)

Michael Dunn
Environmental Assessment and Innovation Division
USEPA Mid-Atlantic Region 3
215-814-2712
dunn.michael@epa.gov

----- Forwarded by Michael Dunn/R3/USEPA/US on 11/04/2010 01:21 PM -----

From: Amy Caprio/R3/USEPA/US
To: Michael Dunn/R3/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA, Jeffrey Lapp/R3/USEPA/US@EPA, Jon Capacasa/R3/USEPA/US@EPA, Evelyn MacKnight/R3/USEPA/US@EPA, Francisco Cruz/R3/USEPA/US@EPA
Date: 11/04/2010 01:16 PM
Subject: Discussion Document for MTM Call on 11.5.10

Per your request Mike

Amy

Executive Assistant
U.S. EPA Region III
1650 Arch Street (3DA00)
Philadelphia, PA 19103

p: 215.814.2156
e: caprio.amy@epa.gov

----- Forwarded by Amy Caprio/R3/USEPA/US on 11/04/2010 01:15 PM -----

From: Shawn Garvin/R3/USEPA/US
To: Amy Caprio/R3/USEPA/US@EPA
Date: 11/04/2010 01:14 PM
Subject: Fw: Discussion Document for 5:00 MTM Conference Call
Sent by: Janice Donlon

----- Forwarded by Janice Donlon/R3/USEPA/US on 11/04/2010 01:13 PM -----

Discussion Document for 5:00 MTM Conference Call

Jim Giattina to: Bob Sussman, Georgia Bednar, Gwendolyn KeyesFleming,
Nancy Stoner, Shawn Garvin, Ann Campbell, Beth Zelenski,
Colleen Flaherty, Stan Meiburg, Janice Donlon, Jordan
Dorfman, Martha Workman, Nena Shaw, Sharan Sitton,
Venu Ghanta

11/03/2010 04:11 PM



ATTACHMENT REDACTED - DELIBERATIVE

Surface Mining 402 Permit Optional Implementation Approach 11.3.10.doc

Michael Dunn/R3/USEPA/US
11/04/2010 04:46 PM

To Jeffrey Lapp, John Forren, John Pomponio, Stefania Shamet
cc Jessica Martinsen, Joy Gillespie
bcc
Subject Rescheduled: Discussion of R4's NPDES Mining proposal
and related issues (Nov 8 11:30 AM EST in 12-223 & (Call in
TBD))

Need to move the meeting due to R4's new 1pm Monday meeting:

**Discussion: Possible Approaches to NPDES permitting for surface
mines in accordance with the April 2010 Guidance**

(b) (6)

Mon 11/08/2010 1:00 PM - 2:30 PM

Attendance is for Michael Dunn

Chair: **Jim Giattina/R4/USEPA/US**
Sent By: **Wanda Hudson/R4/USEPA/US**
Location: Region 4 Conference Room 15C

My apologies in the previous email I have 11.5.10 in the title, but I meant 11.4.10. Sorry for any confusion.

Amy

Executive Assistant
U.S. EPA Region III
1650 Arch Street (3DA00)
Philadelphia, PA 19103

p: 215.814.2156
e: caprio.amy@epa.gov

----- Forwarded by Amy Caprio/R3/USEPA/US on 11/04/2010 02:45 PM -----

From: Amy Caprio/R3/USEPA/US
To: Michael Dunn/R3/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA, Jeffrey
Lapp/R3/USEPA/US@EPA, Jon Capacasa/R3/USEPA/US@EPA, Evelyn
MacKnight/R3/USEPA/US@EPA, Francisco Cruz/R3/USEPA/US@EPA
Date: 11/04/2010 01:16 PM
Subject: Discussion Document for MTM Call on 11.5.10

Per your request Mike

Amy

Executive Assistant
U.S. EPA Region III

1650 Arch Street (3DA00)
Philadelphia, PA 19103

p: 215.814.2156
e: caprio.amy@epa.gov

----- Forwarded by Amy Caprio/R3/USEPA/US on 11/04/2010 01:15 PM -----

From: Shawn Garvin/R3/USEPA/US
To: Amy Caprio/R3/USEPA/US@EPA
Date: 11/04/2010 01:14 PM
Subject: Fw: Discussion Document for 5:00 MTM Conference Call
Sent by: Janice Donlon

----- Forwarded by Janice Donlon/R3/USEPA/US on 11/04/2010 01:13 PM -----

Discussion Document for 5:00 MTM Conference Call

Jim Giattina to: Bob Sussman, Georgia Bednar, Gwendolyn KeyesFleming,
Nancy Stoner, Shawn Garvin, Ann Campbell, Beth Zelenski,
Colleen Flaherty, Stan Meiburg, Janice Donlon, Jordan
Dorfman, Martha Workman, Nena Shaw, Sharan Sitton,
Venu Ghanta

11/03/2010 04:11 PM



Surface Mining 402 Permit Optional Implementation Approach 11.3.10.doc

ATTACHMENT REDACTED - DELIBERATIVE

David Evans/DC/USEPA/US
11/04/2010 08:26 PM

To Denise Keehner
cc Benita Best-Wong, Brian Frazer, Christopher Hunter
bcc
Subject Re: Agenda and talking points for Spruce consultation meeting

Thanks Denise, very clear and constructive feedback. We'll get you a second edition early as possible tomorrow - will need to check in with Brian and Chris on realistic timing.

Dave

-----Denise Keehner/DC/USEPA/US wrote: -----

To: David Evans/DC/USEPA/US@EPA, Benita Best-Wong/DC/USEPA/US@EPA
From: Denise Keehner/DC/USEPA/US
Date: 11/04/2010 06:33PM
Cc: Brian Frazer/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA
Subject: Re: Agenda and talking points for Spruce consultation meeting

I reviewed the Agenda and talking points and have a few comments. Of course I have no

(b) (5)



Sent by EPA Wireless E-Mail Services

David Evans

----- Original Message -----

From: David Evans
Sent: 11/04/2010 04:11 PM EDT
To: Denise Keehner; Benita Best-Wong

Cc: Brian Frazer; Christopher Hunter

Subject: Agenda and talking points for Spruce consultation meeting
Denise-

I asked Chris to develop an agenda and TPs to prepare for meeting with Arch Coal, Army, and St of WV to satisfy our "404(c) "Consultation" meeting requirement for the Spruce Mine veto action. I think that meeting is expected to be next Friday, and we have scheduled pre-meeting with Army only on Nov. 9, and internal EPA pre-brief planned for Monday.

We'd like you to send this (or as you'd like us to revise it) to OW so they see our suggested approach to consultation meeting before the Monday pre-brief.

Let us know questions or comments. If attachment doesn't come through, Chris can send. I'm at CEQ and heading home afterwards.

Dave
David Evans, Director
Wetlands Division
Office of Wetlands, Oceans and Watersheds
(202) 566-0535
(202) 725-6415 (cell)

-----Sent from my BlackBerry Wireless Handheld

Christopher Hunter

----- Original Message -----

From: Christopher Hunter

Sent: 11/04/2010 11:39 AM EDT

To: David Evans

Cc: Brian Frazer; Palmer Hough

Subject: For Forwarding: Agenda and talking points for Spruce consultation meeting

Revised to include Dave's comments.

[attachment "Draft agenda and talking points for consultation v2.doc" deleted by Denise Keehner/DC/USEPA/US]

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

Tanya Code/DC/USEPA/US
11/04/2010 11:02 PM

To Denise Keehner, Benita Best-Wong
cc
bcc
Subject Talking Points for OD Staff Meeting

**Talking Points for OD Staff Meeting
November 5, 2010**

Non-responsive

[REDACTED]

[REDACTED]

Spruce Mine 404(c)

- Consultation meeting with Arch Coal, Army, and the state of West Virginia is scheduled for Nov. 12.
(b) (5)

Non-responsive

[REDACTED]

Surface Coal Mining in Appalachia

Premier Elkhorn Mine ECP Project

- (b) (5)
- [REDACTED]

(b) (5)

[REDACTED]

Non-responsive

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Cliff Rader/DC/USEPA/US

11/05/2010 09:45 AM

To: Brian Frazer

cc: Hunter.Christopher

bcc:

Subject: Re: Draft 3(a) letter from Doe Branch Surface Mine

Here you go - ahead of schedule!



ATTACHMENT REDACTED - DELIBERATIVE

ofa edits Doe Branch EPA Comment Draft 11-4-10.doc

Brian Frazer

Kevin, Mike and Cliff, Wetlands Division receive...

11/05/2010 07:10:28 AM

From: Brian Frazer/DC/USEPA/US
To: Kevin Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA
Cc: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/05/2010 07:10 AM
Subject: Draft 3(a) letter from Doe Branch Surface Mine

Kevin, Mike and Cliff,

Wetlands Division received from Region 3 a draft 3a letter for the non-ECP Doe Branch Mine in VA letter. We have reviewed the letter and our comments are incorporated in the draft below.

The Basic information on the mine is as follows:

- 5 valley fills
- 16,000 lf of stream impacts
- 2 acres of wetland impacts
- approximately 60% remining
- Conductivity on-site is generally below 500, downstream is generally above 500.

Please review and let me and Chris Hunter know if you have any comments. The Region needs HQ comments back by **Wednesday November 10**.

Thanks,

bf

[attachment "Doe Branch EPA Comment Draft 11-4-10 - ch.doc" deleted by Cliff Rader/DC/USEPA/US]

Timothy
Landers/DC/USEPA/US
11/05/2010 09:57 AM

To: Js Wilson
cc
bcc
Subject: *Confidential: Re: Fw: attorney client product. Confidential

Thanks Scott. I hadn't seen this before (b) (5)

[REDACTED]



Elkhorn Final Signed.pdf

Js Wilson

Tim: (b) (5)

11/04/2010 03:30:45 PM

From: Js Wilson/DC/USEPA/US
To: Timothy Landers/R6/USEPA/US@EPA
Date: 11/04/2010 03:30 PM
Subject: *Confidential: Fw: attorney client product. Confidential

Tim:

(b) (5)
[REDACTED]

Scott Wilson, Energy Coordinator
Industrial Permits Branch (4203M)
Office of Wastewater Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
202-564-6087

----- Forwarded by Js Wilson/DC/USEPA/US on 11/04/2010 03:23 PM -----

From: Linda Boornazian/DC/USEPA/US
To: Marcus Zobrist/DC/USEPA/US@EPA, Js Wilson/DC/USEPA/US@EPA, Randy Hill/DC/USEPA/US@EPA
Cc: Tom Lavery/DC/USEPA/US@EPA
Date: 11/03/2010 06:28 PM
Subject: attorney client product. Confidential

(b) (5)
[REDACTED]

(b) (5)



Linda Boornazian
Division Director, Water Permits Division
Office of Wastewater Management
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Mail Code: 4203M,
Room 7420A, EPA East

Phone: 202-564-9545

Fax: 202-564-6392

----- Forwarded by Linda Boornazian/DC/USEPA/US on 11/03/2010 06:22 PM -----

From: Randy Hill/DC/USEPA/US
To: Linda Boornazian/DC/USEPA/US@EPA, Marcus Zobrist/DC/USEPA/US@EPA
Date: 11/03/2010 05:29 PM
Subject: Fw: Discussion Document for 5:00 MTM Conference Call (IGNORE REQUEST - Document Found)
- THANKS

Randy Hill
Deputy Director
Office of Wastewater Management
U.S. EPA (4201M)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(202) 564-0748
(202) 501-2338 (FAX)
hill.randy@epa.gov

Confidential: This transmission may contain deliberative, attorney-client, attorney work product or otherwise privileged material. Do not release under FOIA without appropriate review. If this message has been received by you in error, you are instructed to delete this message from your machine and all storage media whether electronic or hard copy.

----- Forwarded by Randy Hill/DC/USEPA/US on 11/03/2010 05:29 PM -----

From: Martha Workman/DC/USEPA/US
To: hanlon.jim@epa.gov, Randy Hill/DC/USEPA/US@EPA, Tom Laverty/DC/USEPA/US@EPA, Louis Eby/DC/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA
Date: 11/03/2010 04:38 PM
Subject: Fw: Discussion Document for 5:00 MTM Conference Call (IGNORE REQUEST - Document Found)
- THANKS

Martha Lee Workman
Program Specialist/Staff Assistant
Office of Water (4101M)
Immediate Office
1200 Pennsylvania Avenue., NW
Washington, DC 20460
Cubicle 3219C EPA East
Telephone: (202) 564-3774
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E-mail: workman.martha@epa.gov

----- Forwarded by Martha Workman/DC/USEPA/US on 11/03/2010 04:37 PM -----

From: Jim Giattina/R4/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA, Georgia Bednar/DC/USEPA/US@EPA, Gwendolyn
KeyesFleming/R4/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@EPA, Shawn
Garvin/R3/USEPA/US@EPA, Ann Campbell/DC/USEPA/US@EPA, Beth
Zelenski/DC/USEPA/US@EPA, Colleen Flaherty/DC/USEPA/US@EPA, Stan
Meiburg/R4/USEPA/US@EPA, Janice Donlon/R3/USEPA/US@EPA, Jordan
Dorfman/DC/USEPA/US@EPA, Martha Workman/DC/USEPA/US@EPA, Nena
Shaw/DC/USEPA/US@EPA, Sharan Sitton/R4/USEPA/US@EPA, Venu
Ghanta/DC/USEPA/US@EPA
Date: 11/03/2010 04:11 PM
Subject: Discussion Document for 5:00 MTM Conference Call

[attachment "Surface Mining 402 Permit Optional Implementation Approach 11.3.10.doc" deleted by
Timothy Landers/DC/USEPA/US]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV - 2 2010

Colonel Keith A. Landry
District Engineer
Louisville District Corps of Engineers
Attn: Todd Hagman (Regulatory Branch)
OP-FN, Room 752
P.O. Box 59
Louisville, Kentucky 40201-0059

Subject: Premier Elkhorn Coal Company, Little Fork Surface Mine
U.S. Army Corps of Engineers LRL-2007-0594
Kentucky Division of Mine Permits #898-0800

Dear Colonel Landry:

The U.S. Environmental Protection Agency (EPA), Region 4, has reviewed the information submitted by or on behalf of the Premier Elkhorn Coal Company for impacts to jurisdictional waters of the U.S. as a result of proposed surface coal mining activities associated with its Little Fork Surface Mine in Pike County, Kentucky (LRL-2007-0594; #898-0800). Our review has included the original April 24, 2007, U.S. Army Corps of Engineers (Corps) Clean Water Act (CWA) Section 404 permit application as well as several additional documents provided by or on behalf of the permit applicant. EPA is concerned that the permit, as proposed, is not consistent with requirements of the agencies' regulations, including the Section 404(b)(1) Guidelines, and therefore recommends that changes to the project identified in this letter be incorporated before authorization is provided. EPA is also recommending that an Environmental Impact Statement should be prepared for this permit to assess potential environmental impacts under the National Environmental Policy Act.

The applicant originally sought authorization to impact 6,845 linear feet (lf) of ephemeral and intermittent streams to facilitate construction of six hollow fills and four in-stream sediment ponds in unnamed jurisdictional tributaries to Little Fork, Robinson Creek, and Indian Creek. Little Fork discharges into Robinson Creek, and both Robinson Creek and Indian Creek discharge directly into Shelby Creek in the Levisa Fork watershed. Subsequently, the applicant revised the mine plan and presently proposes five hollow fills and three in-stream sediment control ponds. Anticipated impacts to jurisdictional waters now comprise 5,560 lf of ephemeral and intermittent streams, including 4,415 lf as a result of the hollow fills and 1,145 lf as a result of sediment control ponds and a "drainage corridor" between the toe of HF#3 and Pond#3.

EPA has been coordinating closely with your staff and the permit applicant since the 60-day ECP review period began on August 19, 2010, (including a 15-day extension of the review period). On September 30, 2010, EPA submitted a comment letter to the Corps providing additional detail on our informal comments of August 20, 2010, and requesting a meeting with

the Corps and the applicant to initiate efforts to resolve these concerns. EPA and the Corps subsequently held a conference call on October 6, 2010, to discuss EPA's letter and outline a path towards resolution of the concerns described therein. On October 14, 2010, EPA, the Corps, and the applicant held the first of numerous conference calls to discuss additional information requirements and opportunities to resolve ongoing concerns with the proposed project.

EPA is appreciative of the applicant's efforts during this process, which have included compilation and submittal of additional information substantiating the position that use of the adjacent reclaimed impoundment to store spoil material is not a practicable alternative for the proposed Little Fork Surface Mine. The applicant has also agreed to implement best management practices (BMP's) to minimize erosion and sedimentation from disturbed areas, retain existing vegetation to the maximum extent practicable, and take efforts to first identify and then isolate the most highly reactive spoil material likely to generate excessive total dissolved solids (TDS) and contribute to elevated specific conductivity (SC). Additionally, the applicant has agreed to amend its mitigation plan to add payment of an in-lieu-fee (ILF) to the Kentucky Department of Fish and Wildlife Resources Wetland and Stream Mitigation Program for authorized impacts to jurisdictional streams adversely affected due to construction of in-stream sediment ponds. Previously, the applicant had proposed an ILF payment for proposed permanent impacts, but planned to mitigate for sediment pond impacts simply via removal of the ponds and restoration of affected streams many years following the impacts themselves.

Despite the changes described above, EPA has significant remaining environmental concerns regarding this project as currently proposed. EPA's review is intended to ensure that the proposed project meets the requirements of the CWA. The CWA Section 404(b)(1) Guidelines promulgated in regulations by EPA in conjunction with the Secretary of the Army establish the substantive environmental standards applied in the review of projects proposing to discharge dredged or fill material into waters of the United States. The Guidelines establish a sequence of review requiring: (1) an evaluation of practicable alternatives that meet the project's basic purpose to ensure selection of the least environmentally damaging practicable alternative so long as that alternative will not result in significant environmental degradation); (2) taking all appropriate and practicable steps to minimize potential adverse impacts; and (3) compensation for all remaining unavoidable impacts to waters of the United States. In addition, the Guidelines require that no discharge may be permitted that would cause or contribute to significant degradation of the waters of the United States.

Scientific literature has increasingly recognized the relationship between discharges from surface coal mining operations and downstream water quality impairments. A 2005 published study, "Evaluation of Ionic Contribution to the Toxicity of a Coal-Mine Effluent Using *Ceriodaphnia dubia*" by Kennedy, et al. linked impairment of aquatic life to TDS levels. EPA also notes that in previous technical reports, the Commonwealth of Kentucky has recognized the potential detriment to stream biota in headwater streams in the Eastern Kentucky Coal Field correlated with specific conductivity levels above 400 $\mu\text{S}/\text{cm}$ (Pond and McMurray, 2002¹). A

¹ Pond, G.J. and S.E. McMurray. 2002. A Macroinvertebrate Bioassessment Index for Headwater Streams of the Eastern Kentucky Coalfield Region, Kentucky. Kentucky Department for Environmental Protection, Division of Water. Frankfort, KY.

2008 published study, “Downstream effects of mountaintop coal mining: comparing biological conditions using family- and genus-level macroinvertebrate bioassessment tools,” by Pond, et al. found evidence indicating that mining activities have subtle to severe impacts on aquatic life and the biological conditions of a stream. A 2010 published study by Pond, “Patterns of *Ephemeroptera* taxa loss in Appalachian headwater streams (Kentucky, USA),” links conductivity as the most strongly correlated factor to *Ephemeroptera* abundance in streams impacted by mining and residential development. A draft report by EPA, “The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields,” recognizes that surface coal mining causes effects that include resource loss, water quality impairment, and adverse effects on aquatic resources. Finally, another draft report by EPA, “A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams” recognizes stream-life impacts associated with elevated levels of conductivity.

As part of its permit application, the applicant collected water quality data from project streams in March 2007 and reported specific conductivity values ranging from 469 to 1,777 $\mu\text{S}/\text{cm}$. EPA collected similar data in February 2010 and found specific conductivity in these same streams to range from 57 to 988 $\mu\text{S}/\text{cm}$. In addition, EPA documented specific conductivity in receiving waters downstream of the surface mine site itself ranging from 497 to 1,008 $\mu\text{S}/\text{cm}$ (e.g. Little Fork, Robinson Creek, and Indian Creek). EPA further notes that Indian Creek, which is the receiving water body for 6 of the applicant’s 37 proposed National Pollutant Discharge Elimination System (NPDES) outfalls, is on the KY 2006, 2008, and draft 2010 CWA 303(d) list (partially supporting warm water aquatic habitat) for sedimentation/siltation and TDS.

EPA believes that additional improvements must be made to the proposed mine’s design, management practices, and monitoring plan in order to ensure compliance with the 404(b)(1) Guidelines. These improvements are designed to yield an overall improvement in the condition of the watershed, which has been significantly impacted by historic mining activities. EPA believes that the following conditions should be incorporated into any final authorization under Section 404 in order to ensure that the discharges will not cause or contribute to a violation of State water quality standards (WQS), or cause or contribute to significant degradation of waters of the United States consistent with the Guidelines (40 C.F.R. § 230.10(b) and (c)).

Fill Sequencing and Best Management Practices

EPA recommends that the proposed hollow fills be constructed sequentially (one at a time) with sufficient time between the construction of subsequent fills for water quality monitoring to demonstrate that the discharge of fill material does not result in adverse impacts to the downstream aquatic ecosystem. While the applicant has provided some information to suggest that construction of fills in a sequenced approach would not be feasible, the information provided to EPA has not demonstrated that this approach is not practicable. More importantly, we are concerned that without sequencing and associated monitoring, the project may result in the violation of water quality standards and cause significant degradation of stream functions and biodiversity. The applicant should be required to submit a practicability analysis of alternatives involving a sequenced approach for valley fill construction – including individual fill construction and construction of valley fills in two or three phases – before the proposed project is authorized.

EPA believes that if water quality or biological monitoring downstream of one “sequenced” valley fill demonstrates adverse impacts to the downstream aquatic ecosystem – as determined by exceedances of specific numeric thresholds – the permit should trigger implementation of an adaptive water quality management plan (AMP) prior to construction of the next hollow fill, as described in the enclosed special permit condition (see Enclosure 1). Construction of the next hollow fill would not be authorized if the monthly flow-weighted specific conductivity measured at the representative outfall downstream of the first hollow fill exceeds the applicable water quality criteria for more than one consecutive month, or if the overall trend in conductivity levels are increasing such that the linear trend demonstrates likely future exceedance of such criteria.² To support this demonstration, supplemental monitoring requirements, including both chemical and biological monitoring parameters, should also be included as special conditions.

EPA believes that several demonstrated BMPs and fill construction practices for surface coal mining operations have the potential to reduce existing downstream levels of conductivity and TDS. These practices include efforts to identify and then isolate TDS- or sulfate-producing materials to minimize the likelihood that these materials will come into contact with groundwater or precipitation and therefore impact downstream waters. The proper implementation of similar BMPs has been shown to reduce specific conductance in streams draining a Magoffin County, Kentucky surface coal mine by as much as 75 percent over elevated background conditions in remined valleys.

EPA is appreciative of the applicant’s recent endorsement of measures to identify and isolate TDS and/or sulfate producing materials in the field, as memorialized in their November 1, 2010, list of revised BMP’s. EPA recommends that these measures be included as special conditions into any final authorization under Section 404 for disposal of dredged or fill material into waters of the U.S. for the Little Fork Surface Mine. These special conditions should include, at a minimum, the following:

- Identification via field-based testing of TDS and/or sulfate-producing materials that must then be isolated;
- Implementation of hollow fill design alternatives that reduce infiltration (e.g. compact surface lifts, crown the fill surface) and controls flow through the fill to avoid contact time between water and reactive materials (i.e. TDS and/or sulfate producing geologic strata); and
- Use of only low-reactive or non-reactive durable rock to construct underdrains and place only these same materials adjacent to the sides of the highwalls and hollow fills.

EPA notes that the BMPs described above relate directly to fill activities in waters of the United States that are likely to have impacts on downstream water quality. The Section 404

² With respect to conductivity, EPA would be satisfied with using 500 $\mu\text{S}/\text{cm}$ as an numeric interpretation of the narrative standards relevant here. This value represents best-available scientific information on the relationship between conductivity levels and aquatic life in central Appalachian streams, as described in the scientific literature described earlier in this letter.

regulations establish a requirement at 40 C.F.R. 230(10)(b) that no permit may be issued that would cause or contribute to a violation of WQS. This requirement must be met regardless of whether actions necessary to meet this provision would trigger changes to permits issued under other Federal or State regulatory programs.

Adaptive Management Plan (AMP)

EPA believes that special conditions should include an AMP – described above – based on robust water quality and biological monitoring to identify trends in these parameters and to define specific thresholds of concern. If such thresholds are reached, the AMP would require specific response actions. EPA also believes the AMP should include a phased approach, such that increased impacts to downstream waters would trigger increased remedial actions until such time as water quality goals are met.

Existing scientific literature has demonstrated a strong relationship between elevated levels of specific conductance, surface coal mining activities, and degradation of aquatic communities. Therefore, EPA believes that levels of SC should be included as trigger points within the AMP. Recognizing that conductivity levels in on-site streams are already elevated, and anticipating that specific conductance in affected streams will experience at least a short-term increase during land clearing, initial excavation, and hollow fill construction, the trigger for development of the AMP will be applicable only after the initial six (6) months following the discharge of dredged or fill material into waters of the U.S. (I.4(v)). This initial 6-month period would require notification to both the Corps and EPA if monitoring indicates that the trend in monthly flow-weighted conductivity, defined in Special Condition I.4(iii), will exceed background levels or an acceptable numeric interpretation of the applicable narrative water quality standards³, whichever is greater. Background conditions should be defined as the lesser of values measured in the field in March 2007 and February 2010 (Table 1).

If, however, during any 3 consecutive months during the subsequent 12 months of monitoring, the trend defined at proposed Special Condition I.4(iii) indicates that the monthly flow-weighted conductivity values will not likely fall below levels incompatible with meeting applicable water quality standards, or if any 3 consecutive monthly flow-weighted conductivity values exceed such levels,⁴ then the permittee will conduct an analysis of the sources of effluent conductivity and develop Phase I of the AMP to reduce effluent conductivity (measured as specific conductivity) and TDS (see Enclosures 1 and 2). This AMP, to be developed by the applicant and approved by the Corps, should be based on the most technologically advanced and effective approaches available, and assumes that efforts to identify and isolate TDS- and sulfate-producing geologic strata are implemented as part of mine design and hollow fill construction, as outlined above.

If water quality goals are not met after an additional six months of implementation of the AMP, then Phase II of the AMP will be initiated. This plan will also be developed by the applicant and approved by the Corps. If Phase II of the AMP also fails to result in water quality conditions consistent with the goals outlined herein, it is EPA's recommendation that the applicant be

³ See, *supra*, footnote 2.

⁴ See, *supra*, footnote 2.

required by the permit special conditions to provide additional compensatory mitigation, either on-site or within the 12-digit hydrologic unit code (HUC) sub-watershed, aimed at addressing adverse chemical water quality conditions.

Table 1. Background specific conductivity in project streams.

Station I.D.	Station Location	Date	Investigator	Specific Conductivity (uS/cm)	BACKGROUND CONDITIONS ¹
UT Little Fork	HF#1	March 2007	Applicant	638	638
ROB02	UT HF#1	Feb 2010	EPA R4	769	
UT Little Robinson Crk	HF#3	March 2007	Applicant	1777	988
ROB07	UT HF#3	Feb 2010	EPA R4	988	
UT Little Robinson Crk	HF#4	March 2007	Applicant	785	785 ²
ROB09	UT HF#4	Feb 2010	EPA R4	57 ²	
UT Indian Crk	Pond#21 (HF#5/6)	March 2007	Applicant	469	191 ³
UT Indian Crk	HF#5	March 2007	Applicant	681	
UT Indian Crk	HF#6	March 2007	Applicant	681	
ROB12	UT HF#5/6	Feb 2010	EPA R4	191	

¹ Background specific conductivity is determined as the lesser of *in-situ* specific conductivity measured by the permit applicant in March 2007 and by EPA Region 4 in February 2010.

² Field conditions at HF#4 in February 2010 were not representative of hydrologic conditions required to form the channel present in this valley. As a result, data collected in this valley in February 2010 is considered anomalous.

³ HF#5 and HF#6 are proposed to be built in two forks of a single valley. The toe of each of these proposed fills will lie approximately 140 feet apart, effectively rendering them a single large fill. The two fills will share a single sediment pond (Pond #21), and it is the specific conductivity measured in the field at the proposed location of this pond that will be considered background conditions in this valley.

In addition to concerns regarding conductivity levels directly downstream of proposed valley fills, EPA remains concerned about the overall cumulative impacts of the proposed Little Fork Surface Mine on an already degraded watershed. Therefore, EPA believes the AMP should require monitoring of conductivity levels downstream of the proposed operation in Robinson Creek and Indian Creek. Despite currently elevated conductivity levels in streams adjacent to the project site, as described above, EPA has reason to believe that several streams in the project area currently contribute freshwater dilution to downstream waters. Increasing conductivity levels in these streams, therefore, could make conditions in an already impaired watershed worse.

Therefore, the AMP should require monitoring downstream of the project in Indian Creek and Robinson Creek to ensure that baseline conductivity levels are not exceeded. If monitoring demonstrates increased levels of conductivity in these receiving streams that are attributable or likely attributable to the proposed project, the applicant should be required to implement corrective actions within the watershed to ensure that conductivity levels do not exceed pre-

mining levels. Such opportunities may include remediation of previously mined areas within the watershed, implementing additional BMPs within the project site, or additional contributions to the Kentucky ILF program for projects undertaken within the watershed. Without imposing such a condition in the AMP, EPA is concerned that the project has the potential to cause or contribute to violations of downstream WQS and continuing impairment of downstream waters.

Water Quality

The proposed project would impact more than 1 mile of streams, including the permanent loss of 4,415 lf of streams located in the Robinson Creek and Indian Creek watersheds. Both Robinson Creek and Indian Creek discharge directly into Shelby Creek in the Levisa Fork watershed. Based on our preliminary review of the available water quality data, we believe that the proposed project may cause or contribute to exceedances of WQS in streams that are already known or suspected to be impacted by mining-related (and other) causes. Furthermore, the Kentucky Pollutant Discharge Elimination System (KPDES) General Permit previously issued for this project does not set numeric limits for parameters of concern, such as conductivity, which scientific literature has demonstrated have significant effects on downstream biological communities.

EPA notes that Indian Creek is the receiving water body for 6 of the applicant's 37 NPDES outfalls for this project (authorized under a Kentucky NPDES General Permit, KPDES No. KYG046229). Additionally, nine outfalls discharge to unnamed tributaries of Indian Creek. Indian Creek is on the Kentucky 2006, 2008, and draft 2010 CWA§303(d) lists (partially supporting warm water aquatic habitat) for sedimentation/siltation and TDS. The CWA§303(d) list shows one of the suspected sources of the impairment in Indian Creek to be surface mining. The KPDES General Permit under which the project initially received coverage has expired and has been replaced by the most recent KPDES General Permit to Discharge Treated Wastewater into Waters of the Commonwealth applicable for coal mining (KYG040000; July 1, 2009).

The 2009 KPDES General Permit under which this project is (apparently) covered expressly excludes from coverage operations discharging directly to waters that are listed for coal-mining related pollutants. Such pollutants are defined to include sedimentation, total suspended solids, TDS, conductivity, iron, manganese, and metals. This project will discharge directly to waters that are listed as impaired due to TDS and sedimentation. Therefore, EPA believes that general permit for these outfalls is inappropriate and therefore the Section 402 permit as written does not protect WQS.

The 404(b)(1) Guidelines prohibit permitting a discharge of dredged or fill material if such discharge would cause or contribute to violations of any applicable WQS. In light of this provision, EPA believes that no Section 404 permit should be issued that would authorize discharges to Indian Creek or its tributaries until these inconsistencies are resolved. Alternatively, if the Corps determines that issuing a permit associated with discharges to these streams is appropriate, then the permit should include limits for specific conductance that are protective of water quality. These limits should be based on the conclusions of the scientific studies described above, which reflect best-available scientific information.

National Environmental Policy Act / Environmental Justice

Based on our review of the information available, including a Cumulative Impact Assessment (CIA) for the Upper Levisa, EPA believes it may be appropriate for the Corps to prepare an Environmental Impact Statement (EIS) concerning this proposed project. In making the determination regarding the need to prepare an EIS, we recommend that you consider the relatively large scale of the impacts associated with proposed project, e.g., the loss of over 4,400 lf of stream and the construction of 5 valley fills, as well as questions concerning how effective the proposed mitigation will be at reducing the severity of the potential direct, indirect, and cumulative impacts. In that light, EPA is uncertain that the current mitigation proposal would serve as a basis to support a Finding of No Significant Impact. With regard to the CIA, we are particularly concerned that the geographic boundary (HUC-8) may be too large spatially to provide a meaningful analysis of impacts from mining in the affected watershed. In addition, we are concerned that the CIA does not address potential cumulative human health impacts, and that the CIA presents several instances of incomplete information.

Consistent with Executive Order 12898 entitled "Federal Actions to Address Environmental Justice In Minority Populations and Low-income Populations" and the accompanying Presidential Memorandum, EPA recommends that the Corps' Section 404(b)(1) Guidelines and NEPA reviews analyze the potential for disproportionately high and adverse effects on low-income or minority populations in the area. Specifically, a characterization of the economic status of residents near the site and the conditions they face including any effects relating to the proximity of the blasting zone, locations of discharges of fill material, truck traffic, noise, fugitive dust, and habitat loss needs to be conducted to adequately assess the potential impact to EJ communities. Additional information is also needed concerning sources of drinking water for the affected populations (including municipal water supplies and private sources of drinking water including streams and/or wells). EPA also recommends that you take steps to ensure meaningful engagement of affected communities.

Conclusion

While EPA appreciates the applicant's willingness to discuss the adoption of certain BMP's into their mine plan, we believe that the Corps should incorporate further required special conditions before issuing any final authorization. Without including such conditions, EPA believes the proposed project is inconsistent with the 404(b)(1) Guidelines and will likely cause violations of WQS and associated significant degradation of stream life. EPA's recommended special conditions are outlined above, and detailed in the enclosed document. EPA also requests that we have the opportunity to review and comment on the draft permit and special conditions prior to finalization.

I want to thank you and your staff for your cooperation and willingness to address our issues. We look forward to continue working closely with you and the applicant as the permit is finalized. If you have any questions, please call me at (404) 562-9470 or Eric Somerville of my staff at (706) 355-8514.

Sincerely,

A handwritten signature in black ink that reads "Gaie Mitchell, for". The signature is written in a cursive style.

James D. Giattina
Director
Water Protection Division

Enclosures

cc: Jim Townsend, Louisville District, Louisville, KY
Lee Anne Devine, Louisville District, Louisville, KY
Justin Branham, Louisville District, Sassafras, KY
Joe Blackburn, Office of Surface Mining, Lexington, KY
Lee Andrews, U.S. Fish and Wildlife Service, Frankfort, KY
Carl Campbell, Kentucky Department of Natural Resources, Frankfort, KY
Bruce Scott, Kentucky Department of Environmental Protection, Frankfort, KY
Sandy Gruzesky, Kentucky Division of Water, Frankfort, KY

Enclosure 1
Proposed Clean Water Act Section 404 Permit Special Conditions

I. Best Management Practices & Adaptive Management Plan

1. The permittee shall submit a detailed plan to the U.S. Army Corps of Engineers (Corps) Louisville District and the U.S. Environmental Protection Agency, Region 4 (EPA) for implementing mine design and hollow fill construction alternatives and best management practices (BMPs) to minimize TDS and specific conductivity during the placement of fill material into waters of the United States (U.S.) during the construction of the hollow fills. The objective of these procedures is to ensure that effluent discharging from the mine does not have a monthly flow-weighted specific conductivity greater than that which would violate applicable water quality standards,¹ consistent with best-available science on the relationship between conductivity and aquatic life. This plan must be approved by the Corps, and transmitted to EPA, prior to discharge of any dredged or fill material into any water of the U.S. Proposed actions should include, but are not necessarily limited to:
 - Identification via field-based testing of TDS and/or sulfate producing materials that must then be isolated;
 - Implementation of hollow fill design alternatives that reduce infiltration (e.g. compact surface lifts, crown the fill surface) and controls flow through the fill to avoid contact time between water and reactive materials (i.e. TDS and/or sulfate producing geologic strata);
 - Use of only low-reactive or non-reactive durable rock to construct underdrains and place only these same materials adjacent to the sides of the highwalls and hollow fills.
2. The permittee shall construct hollow fills individually, one at a time, with an adequate monitoring period between completion of one fill to demonstrate water quality is protected. Construction of the next hollow fill would not be authorized if the monthly flow-weighted specific conductivity measured at the representative outfall downstream of the first hollow fill exceeds levels consistent with applicable water quality standards for more than one consecutive month, or if the overall trend in conductivity levels are increasing such that the linear trend demonstrates likely future exceedance of such levels.²
3. The permittee shall submit documentation to the Corps and EPA indicating all BMPs employed in each hollow fill within 30 days of site preparation and commencement of construction of the rock underdrain.

¹ See, *supra*, footnote 2.

² See, *supra*, footnote 2.

4. (i) The permittee must submit monthly flow-weighted conductivity, \bar{K} , to the Corps and EPA for the effluent of Pond#1, Pond#3, Pond#15, and Pond#21 following the commencement of discharges of fill material into waters of the U.S. using data collected as part of the applicable Kentucky NPDES permit, augmented as necessary to meet the special condition requirement below. Monthly flow-weighted conductivity shall be calculated as follows:

$$\bar{K} = \frac{\sum_i (Q_i \times K_i)}{\sum_i Q_i}$$

where:

\bar{K} = monthly flow-weighted conductivity, $\mu\text{S/cm}$

Q_i = flow for the i^{th} sample per month, cfs

K_i = conductivity for the i^{th} sample per month, $\mu\text{S/cm}$.

- (ii) Specific conductivity will be measured no less frequently than two (2) times per month following the initial discharge of dredged or fill material into waters of the U.S. in each valley where such discharges occur through final bond release.

- (iii) The monthly flow-weighted conductivity, \bar{K} , will be plotted as a time series and the trend in effluent conductivity calculated by linear regression. If the trend indicates that the monthly flow-weighted conductivity will exceed background levels, as defined below, or another acceptable numeric interpretation compatible with applicable narrative water quality standards,³ whichever is greater, during the first six months following the initial discharge of dredged or fill material into any water of the U.S., the applicant will promptly notify both the Corps and EPA. All data will be provided to both the Corps and EPA within 15 days of the final monthly measurement used to calculate flow-weighted conductivity.

- (iv) Background specific conductivity levels are defined as the lesser value recorded *in-situ* by the permit applicant in March 2007 and EPA in February 2010, except at HF#4 where anomalous conditions in February 2010 affected data integrity:

Tributary draining HF#1:	638 $\mu\text{S/cm}$
Tributary draining HF#3:	988 $\mu\text{S/cm}$
Tributary draining HF#4:	785 $\mu\text{S/cm}$
Tributary draining HF#5/6:	191 $\mu\text{S/cm}$

- (v) If during any three (3) consecutive months during the subsequent twelve (12) months following the monitoring period outlined in I.4(iii), the trend defined therein indicates that the monthly flow-weighted conductivity values will not

³ See, *supra*, footnote 2.

likely be less than necessary to satisfy applicable water quality standards by the end of this 12-month monitoring period, or if any three (3) consecutive monthly flow-weighted conductivity values exceed such levels,⁴ then the permittee will conduct an analysis of the sources of effluent conductivity and develop an adaptive management plan (AMP) Phase I to reduce effluent conductivity (measured as specific conductivity) and TDS.

(vi) The conductivity trend analysis and adaptive management plan shall be submitted to the Corps for approval, and transmitted to EPA, within 30 days of conditions defined in I.4(v). The plan shall be implemented within 30 days of written approval by the Corps. Implementation of the plan will continue until the monthly flow-weighted conductivity falls below the levels described in paragraph (v), above, for three (3) consecutive months. If after cessation of AMP I implementation, conductivity trends defined in I.4(v) begin to rise, implementation of the AMP will be reinitiated.

5. If monthly flow-weighted conductivity values exceed the levels described in paragraph (v), above, continually for three months after implementation of AMP Phase I, the permittee shall prepare, within 30 days, recommendations for additional actions to reduce effluent conductivity (AMP Phase II). These recommendations shall be implemented within 30 days of written approval by the Corps.

II. Effluent and In-stream Chemical and Biological Monitoring

A. Effluent Monitoring

The permittee shall perform effluent monitoring from representative outfalls on Pond#1, Pond#3, Pond#15, and Pond#21, as these ponds are established. Effluent monitoring samples are to be collected at the outlet of each pond. Where the following monitoring conditions include additional monitoring parameters or monitoring events, these data shall augment, but not replace monitoring requirements in the Kentucky NPDES permit.

a. Parameters and Test Methods

- i) Hydrologic permanence of outflow from the ponds should be monitored and logged by a continuously recording data logger.
- ii) The permittee should perform effluent monitoring of the parameters listed in Table 1, analyzed using EPA Test Methods in 40 CFR Part 136 by an approved licensed laboratory.

b. Sampling Location

The sampling should be conducted at each representative outfall at Pond#1, Pond#3, Pond#15, and Pond#21.

c. Sampling Frequency

⁴ See, supra, footnote 2.

The sampling frequency is as noted in Table 1. Samples required quarterly should be no fewer than five (5) days apart, and the amount of precipitation for the previous 24 hour period should be recorded on-site and reported (to the nearest 0.1 inch) as part of the sampling report. Samples required twice per month should be no fewer than five (5) days apart, and the amount of precipitation for the previous 48 hour period should be recorded on-site and reported (to the nearest 0.1 inch) as part of the sampling report. Monitoring will continue through final bond release.

Reporting

Reports shall contain tabulated data (including sample station I.D., date, and time) and graphs necessary to present information clearly and concisely, including all such tables and graphs necessary to summarize and present the entire period of record for each parameter and sample station. Latitude and longitude coordinates of all water quality monitoring locations with the applicable datum identified must be provided along with photographs and figures illustrating all sample locations. Calibration records of all *in-situ* multi-probe or single-probe water quality instruments and laboratory reports showing the analytical results must also be submitted.

All results should be clearly labeled with the applicable CWA permit number and KDNr DMP number and submitted KDOW, the Corps, and EPA Region 4.

Table 1. Supplemental effluent and in-stream water quality monitoring parameters.

Parameter	Units	Method	Sample Frequency
Bicarbonate Alkalinity	mg/l		Quarterly
Chlorides	mg/l	EPA300.0	Quarterly
Discharge	cfs	DOWSOP03019	Twice per month
Dissolved oxygen	mg/l	DOWSOP03014	Twice per month
Duration of discharge ¹	days		Continuous
Hardness (as CaCO ₃)	mg/l	SM 2340B	Quarterly
pH	s.u.	DOWSOP03014	Quarterly
Precipitation	inches		Continuous
Sulfates	mg/l	EPA300.0	Quarterly
Specific conductance ²	uS/cm	EPA120.1	Twice per month
Temperature	Deg C	DOWSOP03014	Twice per month
Turbidity	ntu	DOWSOP03014	Twice per month
Total Dissolved Solids (TDS)	mg/l	SM 2540C	Quarterly
Total Calcium	ug/l	EPA200.7	Quarterly
Total Magnesium	ug/l	EPA200.7	Quarterly
Total Potassium	ug/l		Quarterly
Total Sodium	ug/l		Quarterly
Total Recoverable Antimony	ug/l	EPA200.8	Quarterly
Total Recoverable Arsenic	ug/l	EPA200.8	Quarterly
Total Recoverable Beryllium	ug/l	EPA200.8	Quarterly
Total Recoverable Cadmium	ug/l	EPA200.8	Quarterly
Total Recoverable Chromium (III)	ug/l		
Total Recoverable Chromium (IV)	ug/l		

Total Recoverable Copper	ug/l	EPA200.8	Quarterly
Total Recoverable Iron ²	ug/l	EPA200.8	Quarterly
Total Recoverable Lead	ug/l	EPA200.8	Quarterly
Total Recoverable Manganese ²	ug/l	EPA200.8	Quarterly
Total Recoverable Mercury	ug/l	EPA1631E or 245.7	Quarterly
Total Recoverable Nickel	ug/l	EPA200.8	Quarterly
Total Recoverable Selenium	ug/l	EPA200.8	Quarterly
Total Recoverable Silver	ug/l	EPA200.8	Quarterly
Total Recoverable Thallium	ug/l	EPA200.8	Quarterly
Total Recoverable Zinc	ug/l	EPA200.8	Quarterly

¹ Duration of discharge from pond should be measured using a continuously recording data logger.

² Specific conductance, manganese, and iron need to be sampled at in-stream chemical monitoring locations only, unless otherwise stated in the applicable Kentucky NPDES permit.

B. WET Monitoring

Beginning at the initiation of discharge from representative outfalls (as specified above under "Effluent Monitoring"), EPA believes coal mine permits should require the permittee to perform either acute or chronic WET tests on the representative outfalls based on the duration of the discharge as documented by the continuously recording data loggers referenced in II.A(a)(i). The results of WET monitoring will be used to determine the effectiveness of the BMPs.

In cases where hydrologic permanence monitoring data indicate a sediment pond with any volume of discharge lasting more than 4 consecutive days, chronic WET tests should be performed using *Ceriodaphnia dubia* and *Pimephales promelas* and using a dilution series that includes 100 percent effluent and the in-stream waste concentration.⁵ The end points should be reported as the inhibition concentration that affects 25% of the test organisms compared to the control (IC₂₅). Sampling should be performed quarterly. The operator should use WET testing procedures outlined in EPA's document entitled, "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms" (October 2002).

In cases where the effluent discharge may be short in duration, it may be necessary to collect a high volume effluent sample and properly preserve it for use in the static-renewal test. Please refer to Section 8.5.4 on page 32 of EPA's document entitled, "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms" (October 2002). Alternative acute WET test organisms are either *Daphnia magna* or *D. pulex* and *Pimephales promelas*. In addition to reporting these results to the Corps, all results should be reported to EPA and KDOW.

C. In-stream Water Quality Monitoring

The permittee should perform in-stream monitoring for the parameters listed above in Table 1, in accordance with 40 CFR §122.44(d)(1)(vi)(C)(3). Sample collection and quality assurance / quality control should follow Kentucky Standard Operating Procedures at DOWSOP03014 and DOWSOP03015. EPA Test Methods in 40 CFR Part 136 should be used for analytical analysis.

a. Sample Type

Grab samples should be taken whenever possible.

b. Sampling Locations

Samples should be taken from the following locations:

⁵ EPA notes that approved invertebrate WET test species are relatively insensitive to conductivity, as compared to in situ aquatic macroinvertebrates in central Appalachian streams. Nevertheless, EPA believes that WET tests can help identify significant water quality impairments as a result of surface coal mining operations, which can complement numeric conductivity measurements.

- i. One sampling point located upstream of the sediment pond for each representative outfall, as specified above under “Effluent Monitoring” at paragraph II.A. If there is no upstream location, an appropriate background location within the 12-digit hydrologic unit code should be used.
- ii. One in-stream monitoring site located immediately below the toe of the sediment pond for each representative outfall (i.e. ≤ 25 feet from outfall), as specified above under “Effluent Monitoring.”
- iii. One sampling point located *the further* of 200 meters (656 feet) downstream of each representative outfall or the furthest downstream location that is upstream of any tributary confluence. The sampling point should be downstream of riprap and other disturbance and located within a relatively natural and intact riparian zone where possible.
- iv. One sampling point located in the receiving waterbody that is within 50 feet of the first confluence necessary to increase the stream order above that stream in which the outfall is located (e.g. if the outfall is located in a 1st order stream, this sample point should be located no greater than 50 feet downstream of the first confluence that elevates the stream order below the confluence to at least a 2nd order stream)

c. Sample Frequency

The sampling frequency is as noted in Table 1. Samples required quarterly should be no fewer than five (5) days apart, and the amount of precipitation for the previous 24 hour period should be recorded on-site and reported (to the nearest 0.1 inch) as part of the sampling report. In the event that in-stream monitoring results show in-stream specific conductivity levels above those necessary to satisfy applicable water quality standards,⁶ the permittee is required to increase the monitoring frequency for all parameters to two times per month. Samples required twice per month should be no fewer than five (5) days apart, and the amount of precipitation for the previous 48 hour period should be recorded on-site and reported (to the nearest 0.1 inch) as part of the sampling report. Monitoring will continue through final bond release.

d. Conditions for Taking Samples

Samples should be collected during low- or base-flow conditions (e.g., not during, or within 48 hours after, a precipitation event exceeding 0.2 inches).

e. Reporting

Reports shall contain tabulated data (including sample station I.D., date, and time) and graphs necessary to present information clearly and concisely, including all such tables and graphs necessary to summarize and present the entire period of record for each parameter and sample station. Latitude and longitude coordinates of

⁶ See, *supra*, footnote 2.

all water quality monitoring locations with the applicable datum identified must be provided along with photographs and figures illustrating all sample locations. Calibration records of all *in-situ* multi-probe or single-probe water quality instruments and laboratory reports showing the analytical results must also be submitted.

All results should be clearly labeled with the applicable CWA permit number and KDNR DMP number and submitted KDOW, the Corps, and EPA Region 4.

D. In-stream Biological Monitoring

The permittee should implement an annual benthic macroinvertebrate study plan using approved State protocols for benthic macroinvertebrate sampling.

a. Concurrent in-stream monitoring

In-stream samples for specific conductivity, TDS, pH, temperature and dissolved oxygen should be measured at the same locations as the benthic samples using properly calibrated instruments.

b. Methods

The permittee should implement an annual benthic macroinvertebrate study plan using approved state-protocols for benthic macroinvertebrate sampling.

c. Sampling Locations

Use the same locations as shown above for in-stream water quality monitoring.

d. Sampling Frequency

Sampling times will occur consistent with accepted Kentucky protocols (i.e. sample index periods). Sampling will occur annually through final bond release. Sampling should be avoided during periods of excessive precipitation and scouring floods. In cases where a large flow rate of the receiving water does not lend itself to a benthic assessment (i.e., non-wadeable sites), the permittee should perform a bioassessment using fish. Both fish and benthic macroinvertebrate studies should be performed for receiving waterbodies that are conducive to fish assessments. Results from sampling either of the two assemblages may be used to determine if the water body is impaired.

e. Reporting

The permittee should submit the results of the study, including summary tables, appropriate indices of biotic integrity, color photographs and figures showing sample locations, calibration records, etc. to the KDOW, the Corps, and EPA no later than 30 days following the permittee's receipt of the final report.

Enclosure 2
Adaptive Management Plan Implementation Timeline

Phase	Action	Time allowed	Elapsed time since initial discharge of fill material into waters of the U.S.
Pre-AMP	Initial land clearing, excavation, hollow fill construction, and water quality monitoring	6 months	6 months
	Initial post-construction monitoring	3 to 12 months	Up to 18 months
AMP Phase I (if applicable)	Submit AMP I	30 days after AMP I trigger (SC I.4(v))	Up to 19 months
	Approve AMP I	Not specified in Special Condition, estimate 30 days	Up to 20 months
	Implement AMP I	30 days after AMP I Approval	Up to 21 months
	Monitor AMP I	3 to 6 months	Up to 27 months
AMP Phase II (if applicable)	Develop and submit AMP II	30 days after AMP II trigger (SC I.5)	Up to 28 months
	Approve AMP II	Not specified in Special Condition, estimate 30 days	Up to 29 months
	Implement AMP II	30 days after AMP II approval	Up to 30 months
	Monitor AMP II	6 months	Up to 36 months
Additional Mitigation Required (if applicable)	Submit mitigation plan	45 days after end of AMP II	Up to 37.5 months
	Approve mitigation plan	Not specified in Special Condition, estimate 30 days	Up to 38.5 months
	Implement mitigation plan	30 days after mitigation plan approval	Up to 39.5 months

**Christopher
Hunter/DC/USEPA/US**

11/05/2010 10:44 AM

To David Evans, Brian Frazer, Palmer Hough

cc

bcc

Subject Revised Spruce consultation discussion points

In response to Denise's comments.



ATTACHMENT REDACTED - DELIBERATIVE

Draft agenda and talking points for consultation v3.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

David Evans/DC/USEPA/US

11/05/2010 12:09 PM

To Jim Pendergast

cc

bcc

Subject Fw: Agenda and talking points for Spruce consultation meeting---see red-lined areas--which expand on my email yesterday.

Denise latest comments on agenda for consultation meeting, which I was replying to in note I just forwarded.

Dave

David Evans, Director
Wetlands Division
Office of Wetlands, Oceans and Watersheds
(202) 566-0535

----- Forwarded by David Evans/DC/USEPA/US on 11/05/2010 12:08 PM -----

From: Denise Keehner/DC/USEPA/US
To: David Evans/DC/USEPA/US@EPA
Cc: "Benita Best-Wong" <Best-Wong.Benita@epamail.epa.gov>, "Brian Frazer" <Frazer.Brian@epamail.epa.gov>, "Christopher Hunter" <Hunter.Christopher@epamail.epa.gov>
Date: 11/05/2010 11:32 AM
Subject: Re: Agenda and talking points for Spruce consultation meeting---see red-lined areas--which expand on my email yesterday.

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]



ATTACHMENT REDACTED - DELIBERATIVE

Draft agenda and talking points for consultation v2.doc

David Evans/DC/USEPA/US

11/05/2010 12:15 PM

To Jim Pendergast

cc

bcc

Subject Fw: Revised Spruce consultation discussion points

David Evans, Director
Wetlands Division
Office of Wetlands, Oceans and Watersheds
(202) 566-0535

----- Forwarded by David Evans/DC/USEPA/US on 11/05/2010 12:15 PM -----

From: Christopher Hunter/DC/USEPA/US
To: David Evans/DC/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Palmer
Hough/DC/USEPA/US@EPA
Date: 11/05/2010 10:44 AM
Subject: Revised Spruce consultation discussion points

In response to Denise's comments.



ATTACHMENT REDACTED - DELIBERATIVE

Draft agenda and talking points for consultation v3.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

David Evans/DC/USEPA/US

11/05/2010 12:17 PM

To Denise Keehner

cc Benita Best-Wong, Jim Pendergast, Brian Frazer,
Christopher Hunter, Palmer Hough

bcc

Subject Fw: Revised Spruce consultation discussion points

Denise,

I can't read this now, just learned there is a meeting with DOT at 1pm (title was non-descript, had no idea that's what it was) and have to prepare materials.

Dave

David Evans, Director
Wetlands Division
Office of Wetlands, Oceans and Watersheds
(202) 566-0535

----- Forwarded by David Evans/DC/USEPA/US on 11/05/2010 12:16 PM -----

From: Christopher Hunter/DC/USEPA/US
To: David Evans/DC/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Palmer
Hough/DC/USEPA/US@EPA
Date: 11/05/2010 10:44 AM
Subject: Revised Spruce consultation discussion points

In response to Denise's comments.



ATTACHMENT REDACTED - DELIBERATIVE

Draft agenda and talking points for consultation v3.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

Matthew
Klasen/DC/USEPA/US
11/05/2010 03:47 PM

To "Leuck, Lauren"
cc
bcc
Subject Re: SPR Comments

Hey Lauren,

Sorry for the delay, (b) (5)

Let me know if you have any questions about these. I did succeed in keeping my amount of work today to only a moderate amount, which I consider an accomplishment with so much going on.

Enjoy the weekend,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

-----"Leuck, Lauren" <Lauren_D._Leuck@ceq.eop.gov> wrote: -----

To: Matthew Klasen/DC/USEPA/US@EPA
From: "Leuck, Lauren" (b) (6)
Date: 11/04/2010 09:26AM
Subject: SPR Comments

Hi Matt,

(b) (5)

Thanks,
Lauren

Lauren Leuck
Presidential Management Fellow

White House Council on Environmental Quality

(b) (6)

ATTACHMENT REDACTED - DELIBERATIVE



- Surface and General SPR Text 10-27-10 EPA ed.docx

Stefania
Shamet/R3/USEPA/US
11/06/2010 09:02 AM

To Christopher Hunter
cc Jeffrey Lapp, John Pomponio, Regina Poeske
bcc
Subject Re: Fw: Draft Documents for Spruce Meetings

Chris -- I didn't have any comments on the two agendas. I did have comments on the pre-brief paper, specifically the anticipated questions and answers. Please see the attached. This is the first I'd heard of regional participation in the consultation process. I assume Randy and/or Jeff is in the loop and prepared to attend.



ATTACHMENT REDACTED - DELIBERATIVE

Agenda and Questions for November 8th Spruce v1sds.docx

Christopher Hunter

Hello all, (b) (5)

11/05/2010 06:33:26 PM

From: Christopher Hunter/DC/USEPA/US
To: John Pomponio/R3/USEPA/US@EPA, Stefania Shamet/R3/USEPA/US@EPA, Regina Poeske/R3/USEPA/US@EPA, Jeffrey Lapp/R3/USEPA/US@EPA
Date: 11/05/2010 06:33 PM
Subject: Fw: Draft Documents for Spruce Meetings

Hello all,

(b) (5)

Please give me a call if you have questions or concerns.

Thanks

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
(202) 573-6478 (cell)
hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/05/2010 06:25 PM -----

From: Christopher Hunter/DC/USEPA/US
To: David Evans/DC/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Denise Keehner/DC/USEPA/US@EPA, Jim Pendergast/DC/USEPA/US@EPA, Benita Best-Wong/DC/USEPA/US@EPA
Cc: Tanya Code/DC/USEPA/US@EPA, Palmer Hough/DC/USEPA/US@EPA
Date: 11/05/2010 06:15 PM
Subject: Draft Documents for Spruce Meetings

Hello all,
in response to comments received on what might be needed for the Spruce meetings, I've drafted 3

documents for 3 meetings.

Here is my understanding of the schedule for the consultation meetings

Schedule for Consultation Meetings

· (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Sorry for the broad distribution list, but I didn't feel like this could wait much longer. Please let me know comments and suggestions

Chris

[attachment "Agenda and Questions for November 8th Spruce v1.docx" deleted by Stefania Shamet/R3/USEPA/US] [attachment "Agenda and talking points for November 9 Spruce v1.doc" deleted by Stefania Shamet/R3/USEPA/US] [attachment "Agenda and talking points for November 16 Spruce v4.doc" deleted by Stefania Shamet/R3/USEPA/US]

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

Gregory Peck/DC/USEPA/US
11/08/2010 09:57 AM

To **Matthew Klasen, Karyn Wendelowski**
cc
bcc
Subject **Fw: Discussion with R3 on Consultation meetings**

----- Forwarded by Gregory Peck/DC/USEPA/US on 11/08/2010 09:57 AM -----

From: **Christopher Hunter/DC/USEPA/US**
To: **Gregory Peck/DC/USEPA/US@EPA**
Date: **11/08/2010 09:36 AM**
Subject: **Fw: Discussion with R3 on Consultation meetings**



Agenda and talking points for November 16 Spruce v5.doc



Agenda and Questions for November 8th Spruce v2.docx



Agenda and talking points for November 9 Spruce v2.doc

ATTACHMENTS REDACTED - DELIBERATIVE

Chris Hunter
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hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/08/2010 09:35 AM -----

Discussion with R3 on Consultation meetings

Mon 11/08/2010 1:30 PM - 2:00 PM

Rooms: **7129-Rappahannock/DC-CCW-OWOW@EPA**

Required:

Brian Frazer/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA, Denise Keehner/DC/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA, Stefania Shamet/R3/USEPA/US@EPA, Tanya Code/DC/USEPA/US@EPA

Description

Brief update on consultation with Army (Tuesday morning 9:15-10:00). We can use my conference code

(b) (6)

Donna Heron/R3/USEPA/US
11/08/2010 10:36 AM

To Stefania Shamet
cc Bonnie Lomax, John Forren, Margaret Passmore, Michael
Dunn
bcc
Subject Re: Fw: Introduction; request for advice
Draft Response for your Review

(b) (5)

Let me know.

The questions:

Maggie

-Is it possible to get some recent data on the condition of streams to show a comparison overtime on how has EPA and other state agencies been able to minimise harmful effects of MTM on streams.

HQ

-What challenges are being faced by EPA in terms of enforcing sections 303(d) (impaired streams due to selenium concentration) and 404 (discharge of dredged material in the streams) of CWA

-Has any recent progress been made by EPA in this direction

-How much does it cost EPA (a rough estimate) to carry out this exercise of regulation

Also, please let me know if I can discuss these issues with you over phone sometime soon.

Donna Heron
Press Officer
Office of Public Affairs
U.S. Environmental Protection Agency - Region 3
1650 Arch St.
Phila., Pa. 19103
215-814-5113

Stefania Shamet

(b) (5)

11/08/2010 09:43:21 AM

From: Stefania Shamet/R3/USEPA/US
To: Bonnie Lomax/R3/USEPA/US@EPA
Cc: Donna Heron/R3/USEPA/US@EPA, Margaret Passmore/R3/USEPA/US@EPA, Michael
Dunn/R3/USEPA/US@EPA, John Forren/R3/USEPA/US@EPA
Date: 11/08/2010 09:43 AM
Subject: Re: Fw: Introduction; request for advice
Draft Response for your Review

(b) (5)

(b) (5)

Bonnie Lomax

I don't see any reason why you shouldn't talk wit...

11/08/2010 07:11:28 AM

From: Bonnie Lomax/R3/USEPA/US
To: Margaret Passmore/R3/USEPA/US@EPA
Cc: Donna Heron/R3/USEPA/US@EPA, Stefania Shamet/R3/USEPA/US@EPA
Date: 11/08/2010 07:11 AM
Subject: Re: Fw: Introduction; request for advice
Draft Response for your Review

I don't see any reason why you shouldn't talk with her, since her purpose is for research and she was referred to you by Stan L.
However I'll cc Stef Shamet and Donna Heron just in case they feel differently.


Bonnie Turner-Lomax
Communications Coordinator
Environmental Assessment and Innovation Division
U.S. Environmental Protection Agency - Region 3
1650 Arch Street
Philadelphia, PA 19103

215-814-5542 - (Telephone)
215-814-2783 - (FAX)
lomax.bonnie@epa.gov

"Go confidently in the direction of your dreams. Live the life you have imagined"Henry David Thoreau

Margaret Passmore/R3/USEPA/US

**Margaret
Passmore/R3/USEPA/US**
11/06/2010 12:58 PM

To Bonnie Lomax/R3/USEPA/US@EPA
cc
Subject Re: Fw: Introduction; request for advice
Draft Response for your Review 

that's fine. thanks for doing this. If she calls me again, should I talk to her directly?

Margaret Passmore
Freshwater Biology Team
Office of Monitoring and Assessment (3EA50)
Environmental Assessment and Innovation Division
USEPA Region 3
1060 Chapline Street, Suite 303
Wheeling, WV 26003-2995
(p) 304-234-0245

(f) 304-234-0260
passmore.margaret@epa.gov

Visit our website at <http://epa.gov/reg3esd1/3ea50.htm>

Bonnie Lomax

Hi Maggie - - Here's my draft response to Ms. K...

11/02/2010 02:34:59 PM

From: Bonnie Lomax/R3/USEPA/US
To: Margaret Passmore/R3/USEPA/US@EPA
Date: 11/02/2010 02:34 PM
Subject: Re: Fw: Introduction; request for advice
Draft Response for your Review

Hi Maggie - - Here's my draft response to Ms. Karmesho. If you are ok wiith response , I will send it to her. Please advise. Thank you very much.

++++
++++

(b) (5)

Bonnie Turner-Lomax
Communications Coordinator
Environmental Assessment and Innovation Division
U.S. Environmental Protection Agency - Region 3
1650 Arch Street
Philadelphia, PA 19103

215-814-5542 - (Telephone)
215-814-2783 - (FAX)
lomax.bonnie@epa.gov

"Go confidently in the direction of your dreams. Live the life you have imagined".....Henry David Thoreau

Margaret Passmore/R3/USEPA/US

Margaret
Passmore/R3/USEPA/US

To

11/01/2010 10:07 AM

Bonnie Lomax/R3/USEPA/US@EPA

cc

Subject Fw: Introduction; request for advice

can you speak with this gentleman, please?

Margaret Passmore
Freshwater Biology Team
Office of Monitoring and Assessment (3EA50)
Environmental Assessment and Innovation Division
USEPA Region 3
1060 Chapline Street, Suite 303
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(p) 304-234-0245
(f) 304-234-0260
passmore.margaret@epa.gov

Visit our website at <http://epa.gov/reg3esd1/3ea50.htm>

----- Forwarded by Margaret Passmore/R3/USEPA/US on 11/01/2010 10:07 AM -----

From: Stefania Shamet/R3/USEPA/US
To: Margaret Passmore/R3/USEPA/US@EPA
Date: 11/01/2010 09:48 AM
Subject: Re: Fw: Introduction; request for advice

Send him to Bonnie/Donna.

Margaret Passmore	any advice on who should talk to this guy? Mar...	11/01/2010 07:41:50 AM
-------------------	---	------------------------

From: Margaret Passmore/R3/USEPA/US
To: Stefania Shamet/R3/USEPA/US@EPA
Date: 11/01/2010 07:41 AM
Subject: Fw: Introduction; request for advice

any advice on who should talk to this guy?

Margaret Passmore
Freshwater Biology Team
Office of Monitoring and Assessment (3EA50)
Environmental Assessment and Innovation Division
USEPA Region 3
1060 Chapline Street, Suite 303
Wheeling, WV 26003-2995
(p) 304-234-0245
(f) 304-234-0260
passmore.margaret@epa.gov

Visit our website at <http://epa.gov/reg3esd1/3ea50.htm>

----- Forwarded by Margaret Passmore/R3/USEPA/US on 11/01/2010 07:41 AM -----

From: NEHA KARMESHU (b) (6) N. Karmeshu
To: Margaret Passmore/R3/USEPA/US@EPA

Date: 10/28/2010 03:58 PM
Subject: RE: Introduction; request for advice

Hi Maggie,

Hope you are doing well.

As Stan mentioned, I'm doing research on MTM's affect on the streams of West Virginia. I referred to your paper ("Downstream effects of mountaintop coal mining: comparing biological conditions using family-and genus-level macroinvertebrate bioassessment tools") to get an initial understanding on the extent to which the streams get impaired as a result of this practice and I really appreciate how comprehensively the negative impact has been illustrated.

As I continue with my research, I have following questions in mind and it would be great if you could help me in understanding these issues

- Is it possible to get some recent data on the condition of streams to show a comparison overtime on how has EPA and other state agencies been able to minimise harmful effects of MTM on streams.
- What challenges are being faced by EPA in terms of enforcing sections 303(d) (impaired streams due to selenium concentration) and 404 (discharge of dredged material in the streams) of CWA
- Has any recent progress been made by EPA in this direction
- How much does it cost EPA (a rough estimate) to carry out this exercise of regulation

Also, please let me know if I can discuss these issues with you over phone sometime soon.

Thanks for the help!

Best,
Neha

To: Passmore.Margaret@epamail.epa.gov; (b) (6) N. Karmeshu
Subject: Introduction; request for advice
Date: Tue, 5 Oct 2010 17:27:05 -0400
From: (b) (6) S Laskowski

Hi Maggie. I hope that you are well...and still enjoying the job. There seems to be no let-up in the MTM issues. Please pass along my greetings to the other Wheeling folks.

(b) (6)

I have a request. Neha Karmeshu, a first-year MES student is researching MTM for her paper this term. She wants to focus on water quality issues. We were hoping that you could direct her to the best sources on thses issues. Any help would be appreciated.

Stan

Gregory Peck/DC/USEPA/US

11/08/2010 03:14 PM

To Karyn Wendelowski, MichaelG Lee

cc

bcc

Subject Fw: Draft 3(a) letter from Doe Branch Surface Mine

----- Forwarded by Gregory Peck/DC/USEPA/US on 11/08/2010 03:13 PM -----

From: Brian Frazer/DC/USEPA/US
To: Gregory Peck/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA
Date: 11/08/2010 02:46 PM
Subject: Fw: Draft 3(a) letter from Doe Branch Surface Mine

Greg and Matt - Attached below is the Doe branch 3(a) letter. please review and send your comments by cob Wednesday.

Thanks,

bf

Brian M. Frazer, Chief
Wetlands & Aquatic Resources Regulatory Branch
Office of Wetlands, Oceans and Watersheds
U.S. EPA
1200 Pennsylvania Avenue, NW (MC 4502T)
Washington, DC 20460
202-566-1652

----- Forwarded by Brian Frazer/DC/USEPA/US on 11/08/2010 02:44 PM -----

From: Brian Frazer/DC/USEPA/US
To: Kevin Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA
Cc: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/05/2010 07:10 AM
Subject: Draft 3(a) letter from Doe Branch Surface Mine

Kevin, Mike and Cliff,

Wetlands Division received from Region 3 a draft 3a letter for the non-ECP Doe Branch Mine in VA letter. We have reviewed the letter and our comments are incorporated in the draft below.

The Basic information on the mine is as follows:

- 5 valley fills
- 16,000 lf of stream impacts
- 2 acres of wetland impacts
- approximately 60% remining
- Conductivity on-site is generally below 500, downstream is generally above 500.

Please review and let me and Chris Hunter know if you have any comments. The Region needs HQ comments back by **Wednesday November 10**.

Thanks,

bf



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch EPA Comment Draft 11-4-10 - ch.doc

Carrie Traver/R3/USEPA/US

11/08/2010 04:59 PM

To Regina Poeske

cc

bcc

Subject updates to Spruce Reference List

Here is a compilation of all the updates on the references. We still don't have copies of everything, but it's close.

The 2 folders of reference pdfs are in: L:\Share\Mountaintop\Spruce No.1\Administrative Record\6A. PDF References. I've attempted to zip the folders so we can download to the ESC, but I keep having difficulties compressing them due to lack of disk space, etc... and now I'm out of time for the week. I can try again next week, unless someone else is able to do it earlier.



ATTACHMENT REDACTED - DELIBERATIVE

Reference update.doc

Carrie Traver
USEPA Region 3
Office of Environmental Programs
1650 Arch Street - 3EA30
Philadelphia, PA 19103
215-814-2772
traver.carrie@epa.gov

**Jessica
Martinsen/R3/USEPA/US**

11/09/2010 08:22 AM

To Mark Douglas

cc

bcc

Subject Fw: draft 3(a) letter from Doe Branch Surface Mine

Jessica Martinsen
U.S. EPA Region III
Office of Environmental Programs
1650 Arch St. (3EA30)
Philadelphia, PA 19103
215-814-5144 (office)
215-814-2783 (fax)

----- Forwarded by Jessica Martinsen/R3/USEPA/US on 11/09/2010 08:21 AM -----

From: Christopher Hunter/DC/USEPA/US
To: Jessica Martinsen/R3/USEPA/US@EPA
Date: 11/08/2010 04:50 PM
Subject: Fw: draft 3(a) letter from Doe Branch Surface Mine

like I said, this is just my first cut, but it's a start.

Chris

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/08/2010 04:49 PM -----

From: Christopher Hunter/DC/USEPA/US
To: Brian Frazer/DC/USEPA/US@EPA
Cc: Ross Geredien/DC/USEPA/US@EPA, Marcel Tchaou/DC/USEPA/US@EPA, Brian
Topping/DC/USEPA/US@EPA
Date: 11/04/2010 02:55 PM
Subject: draft 3(a) letter from Doe Branch Surface Mine

Brian,
we've received the Region 3 draft letter for the non-ECP Doe Branch Mine in VA. The Region needs HQ comments back by Wednesday November 10. I've reviewed and included some suggested edits, but overall I think the letter looks fine. If you agree, please forward to OFA (Cliff), OGC (Mike Lee and Kevin), and OW.

Chris

Basic information on the mine:

- 5 valley fills
- 16,000 lf of stream impacts
- 2 acres of wetland impacts
- approximately 60% remining
- Conductivity on-site is generally below 500, downstream is generally above 500



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch EPA Comment Draft 11-4-10 - ch.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

**Jessica
Martinsen/R3/USEPA/US**

11/09/2010 08:22 AM

To Mark Douglas

cc

bcc

Subject Fw: Draft 3(a) letter from Doe Branch Surface Mine

Jessica Martinsen
U.S. EPA Region III
Office of Environmental Programs
1650 Arch St. (3EA30)
Philadelphia, PA 19103
215-814-5144 (office)
215-814-2783 (fax)

----- Forwarded by Jessica Martinsen/R3/USEPA/US on 11/09/2010 08:22 AM -----

From: Christopher Hunter/DC/USEPA/US
To: Jessica Martinsen/R3/USEPA/US@EPA
Date: 11/08/2010 04:50 PM
Subject: Fw: Draft 3(a) letter from Doe Branch Surface Mine

and Cliff's 1 line of comments

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/08/2010 04:50 PM -----

From: Cliff Rader/DC/USEPA/US
To: Brian Frazer/DC/USEPA/US@EPA
Cc: Hunter.Christopher@epamail.epa.gov
Date: 11/05/2010 09:45 AM
Subject: Re: Draft 3(a) letter from Doe Branch Surface Mine

Here you go - ahead of schedule!



ATTACHMENT REDACTED - DELIBERATIVE

ofa edits Doe Branch EPA Comment Draft 11-4-10.doc

Brian Frazer

Kevin, Mike and Cliff, Wetlands Division receive...

11/05/2010 07:10:28 AM

From: Brian Frazer/DC/USEPA/US
To: Kevin Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Cliff
Rader/DC/USEPA/US@EPA
Cc: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/05/2010 07:10 AM
Subject: Draft 3(a) letter from Doe Branch Surface Mine

Kevin, Mike and Cliff,

Wetlands Division received from Region 3 a draft 3a letter for the non-ECP Doe Branch Mine in VA letter.
We have reviewed the letter and our comments are incorporated in the draft below.

The Basic information on the mine is as follows:

- 5 valley fills
- 16,000 lf of stream impacts
- 2 acres of wetland impacts
- approximately 60% remining
- Conductivity on-site is generally below 500, downstream is generally above 500.

Please review and let me and Chris Hunter know if you have any comments. The Region needs HQ comments back by **Wednesday November 10**.

Thanks,

bf

[attachment "Doe Branch EPA Comment Draft 11-4-10 - ch.doc" deleted by Cliff Rader/DC/USEPA/US]

**Matthew
Klasen/DC/USEPA/US**
11/09/2010 10:05 AM

To: Matthew Klasen
cc: Andrea Schaller, Sherry Kamke, Simon Manoyan
bcc:
Subject: Re: Dr. Petty's presentation

These two presentations go through ok?

Here's a smaller version of the first one if not.

Thanks,
Matt



EPA_DCmtg_petty_8Nov2010 with new study area slide2.pdf

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Matthew Klasen	And here's presentation #2. Please let me know...	11/09/2010 10:01:40 AM
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From: Matthew Klasen/DC/USEPA/US
To: Andrea Schaller/R5/USEPA/US@EPA, Sherry Kamke/R5/USEPA/US@EPA, Simon Manoyan/R5/USEPA/US@EPA
Date: 11/09/2010 10:01 AM
Subject: Re: Dr. Petty's presentation

And here's presentation #2. Please let me know that these both came through ok.

Thanks,
Matt

[attachment "DC_Final mike.pdf" deleted by Matthew Klasen/DC/USEPA/US]

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Matthew Klasen	Here's a PDF of the presentation going on now. ...	11/09/2010 09:58:38 AM
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From: Matthew Klasen/DC/USEPA/US
To: Sherry Kamke/R5/USEPA/US@EPA, Andrea Schaller/R5/USEPA/US@EPA, Simon Manoyan/R5/USEPA/US@EPA
Date: 11/09/2010 09:58 AM
Subject: Dr. Petty's presentation

Here's a PDF of the presentation going on now. I'll send a second presentation shortly.

Thanks,
Matt

[attachment "EPA_DCmtg_petty_8Nov2010 with new study area slide - smaller.pdf" deleted by Matthew Klasen/DC/USEPA/US]

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Hierarchical Modeling System to Support Decision Making in Mined Appalachian Watersheds

J. Todd Petty, PhD

Michael P. Strager

Paul F. Ziemkiewicz



USEPA Headquarters – Washington, DC
November 9, 2010

OUTLINE

- Ø The Big Picture (Petty)
- Ø Landscape Characterization and Modeling Terrestrial Habitat Conditions (Strager)
- Ø Watershed Modeling and Alternative Futures Analysis (Petty)
- Ø Decision Support Systems (Strager)

Over-Riding Objective

Develop *science-based, spatially-explicit analytical tools* that can be used to *support decision making* (permitting, mitigation, restoration) in mined Appalachian watersheds.

Rationale

Objective and reliable tools are needed to make very difficult and highly charged decisions. Decisions must be:

- Defendable
- Protective but not overly so*

*there is too much at stake (jobs and water and fish)

“Science-Based”

Field validated empirical models that can predict instream response to past, current, and future land use activities.

- Defendable thresholds
- Measures of uncertainty
- Interactive effects among stressors

“Spatially-Explicit”

GIS based, networked, multi-scaled watershed models

- Reliable landscape and stream datasets
- Integration of statistical models into GIS platform
- Scaled from segment - 12, 10 and 8 digit HUCs
- Applied to real watersheds

Timeline

2002 – With funding from WVWRI started building field based stressor-response curves linking AMD water quality to invertebrates and fishes (Freund and Petty 2007, Merovich and Petty 2007).

2003 – With funding from USEPA STAR began building models to link landscape attributes to stream water chemistry and biological response in the upper Mon River basin (Petty et al. 2010).

2005 – With funding from USGS and EPRI developed an Ecological Unit concept and applied it to the prioritization of acid stream remediation (Petty and Thorne 2005).

2006 – With funding from USGS constructed relationships between restoration actions and biological response (McClurg et al. 2007).

2007 – With funding from the WVDEP AML program built AMD remediation scenario models for determining optimal AML reclamation strategies (completed restoration plans for 4 HUC10 watersheds) (Petty et al. 2008).

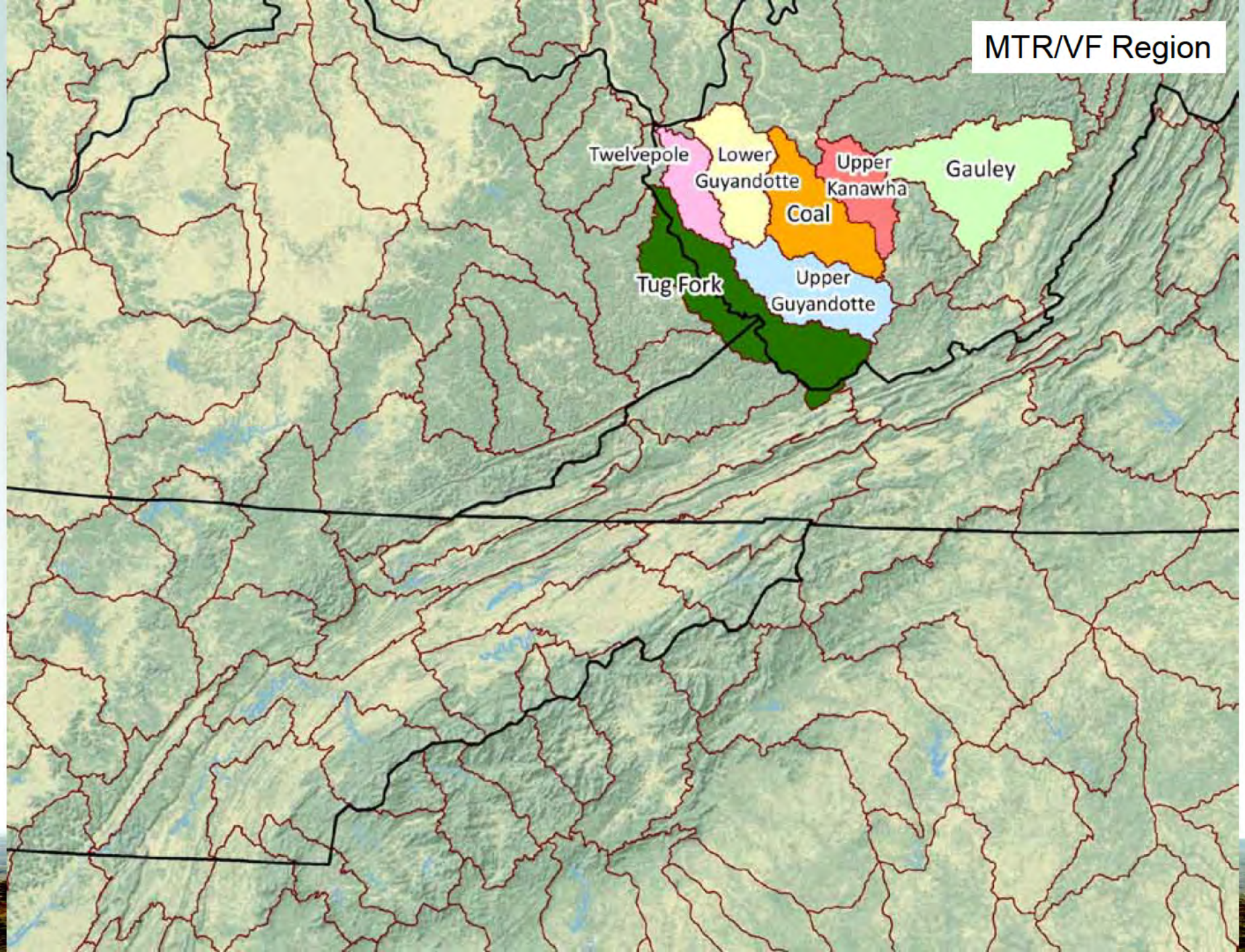
2008 – With funding from USGS and Consol, we began applying technology and concepts to Pigeon Creek of Tug Fork in the southern WV coalfields (Merriam et al. In Press).

2010 – Current project applying technology to southern WV (and KY?) coalfields.

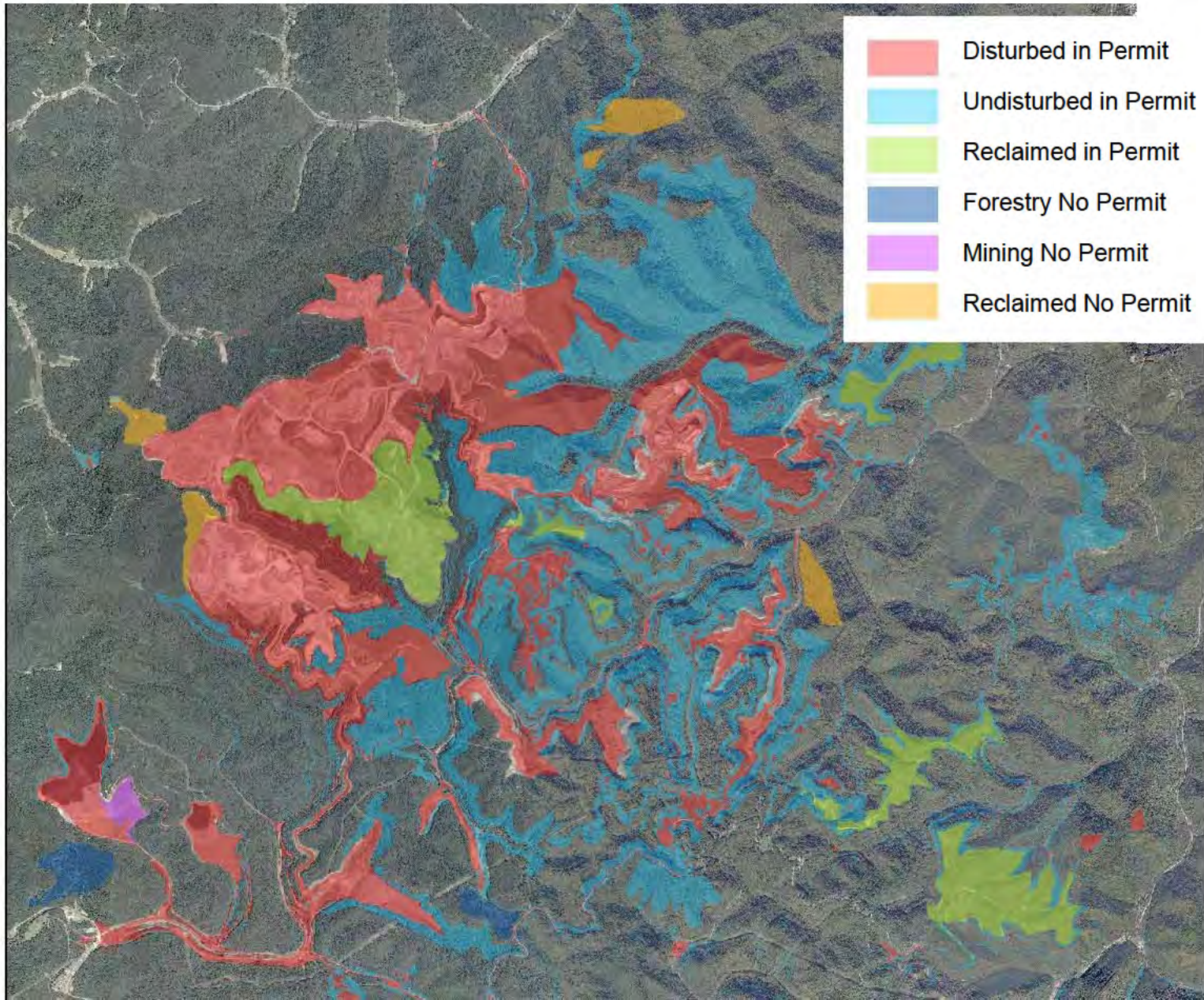
Current EPA Project

- **Objective 1:** Updated statewide landscape characterization from 2009 aerial photography and landscape change analysis (1980s-present)
- **Objective 2:** Watershed model for predicting stream conditions based on landscape attributes
- **Objective 3:** Alternative futures analysis for the MTR-VF region

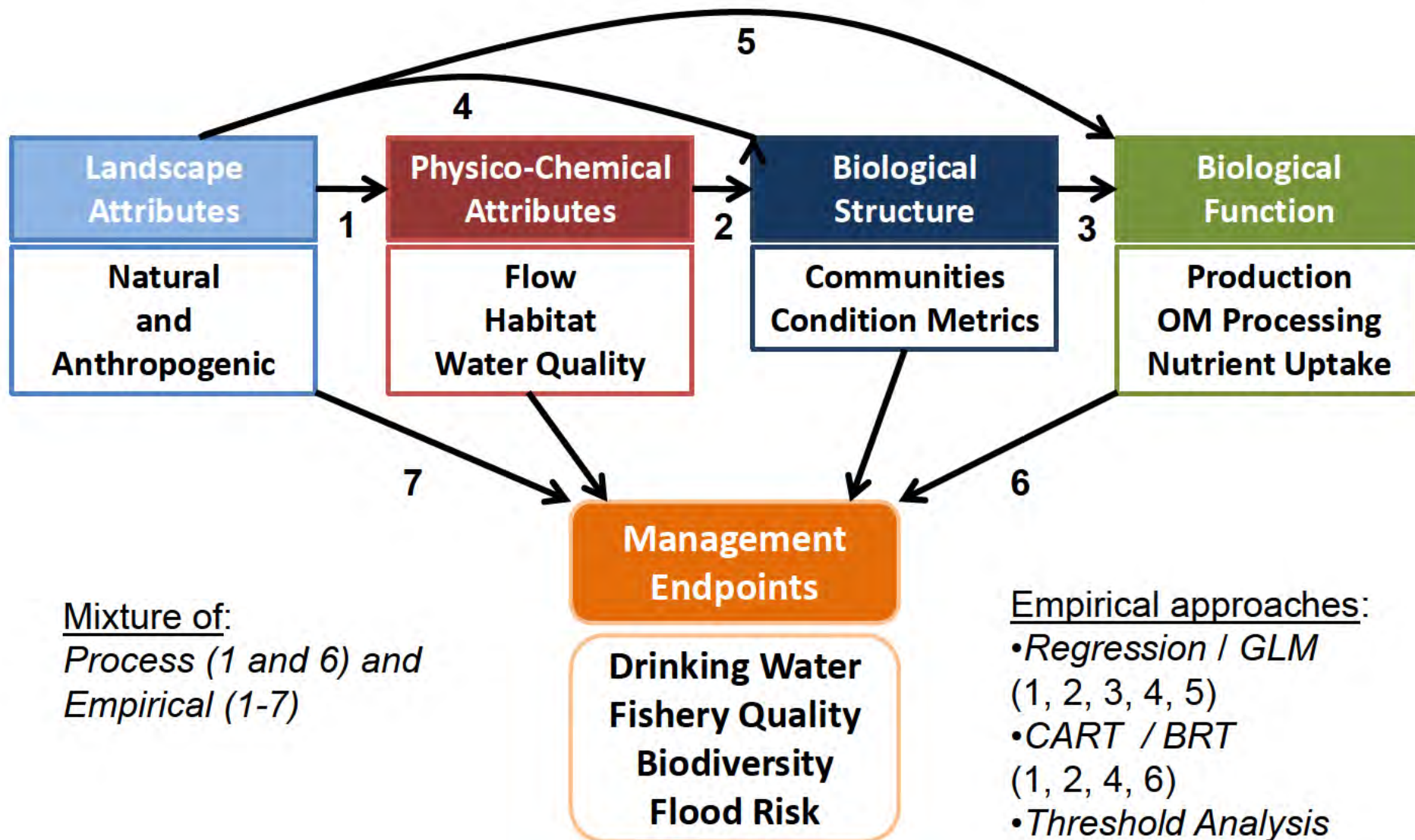
MTR/VF Region



Key Elements: Landscape Characterization



Key Elements: Empirical Modeling



Mixture of:

*Process (1 and 6) and
Empirical (1-7)*

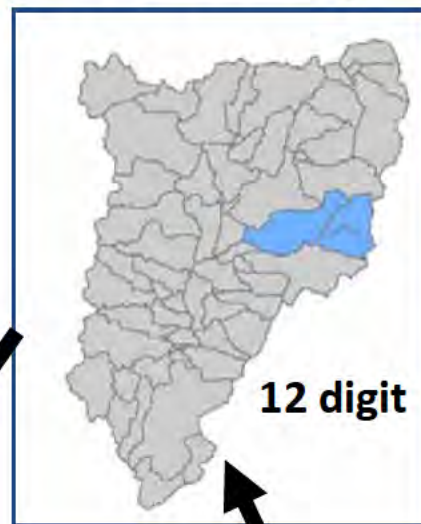
Empirical approaches:

- *Regression / GLM*
(1, 2, 3, 4, 5)
- *CART / BRT*
(1, 2, 4, 6)
- *Threshold Analysis*
(1, 2, 4, 6)

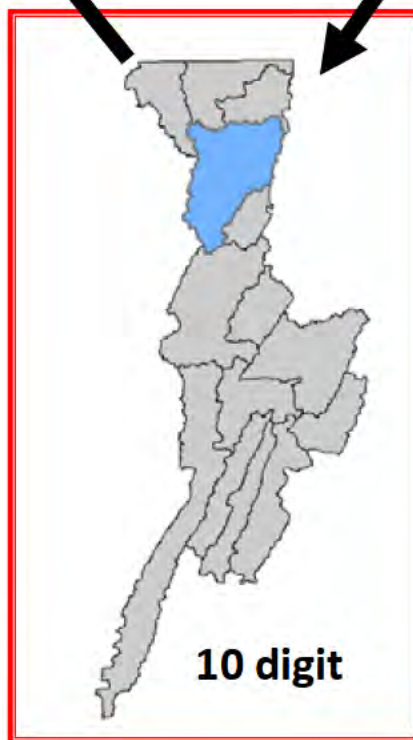
Key Elements: Spatial Scale



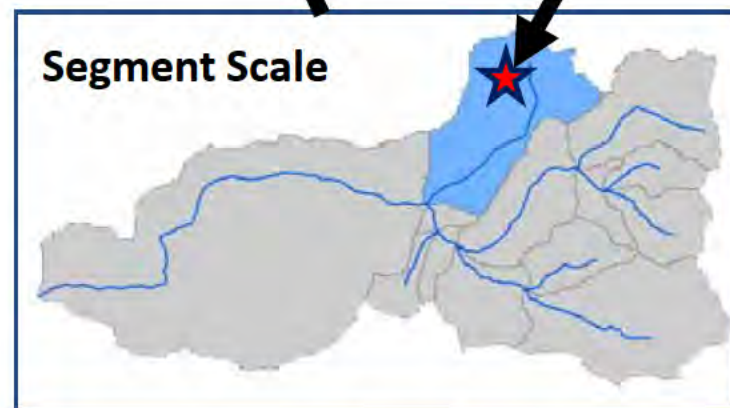
"Region"
 1000 km^2



"Neighborhood"
 10 km^2

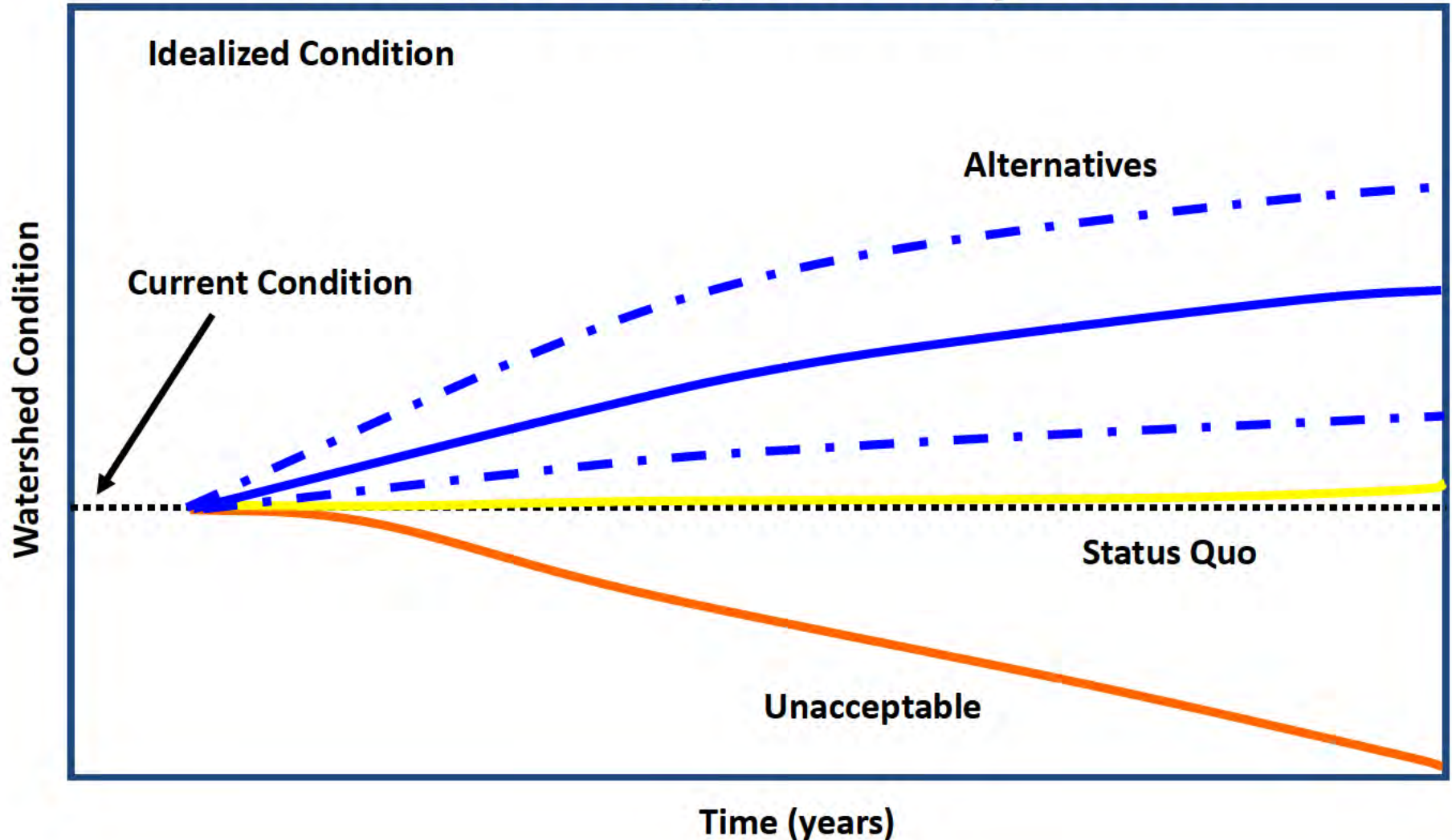


"Community"
 100 km^2

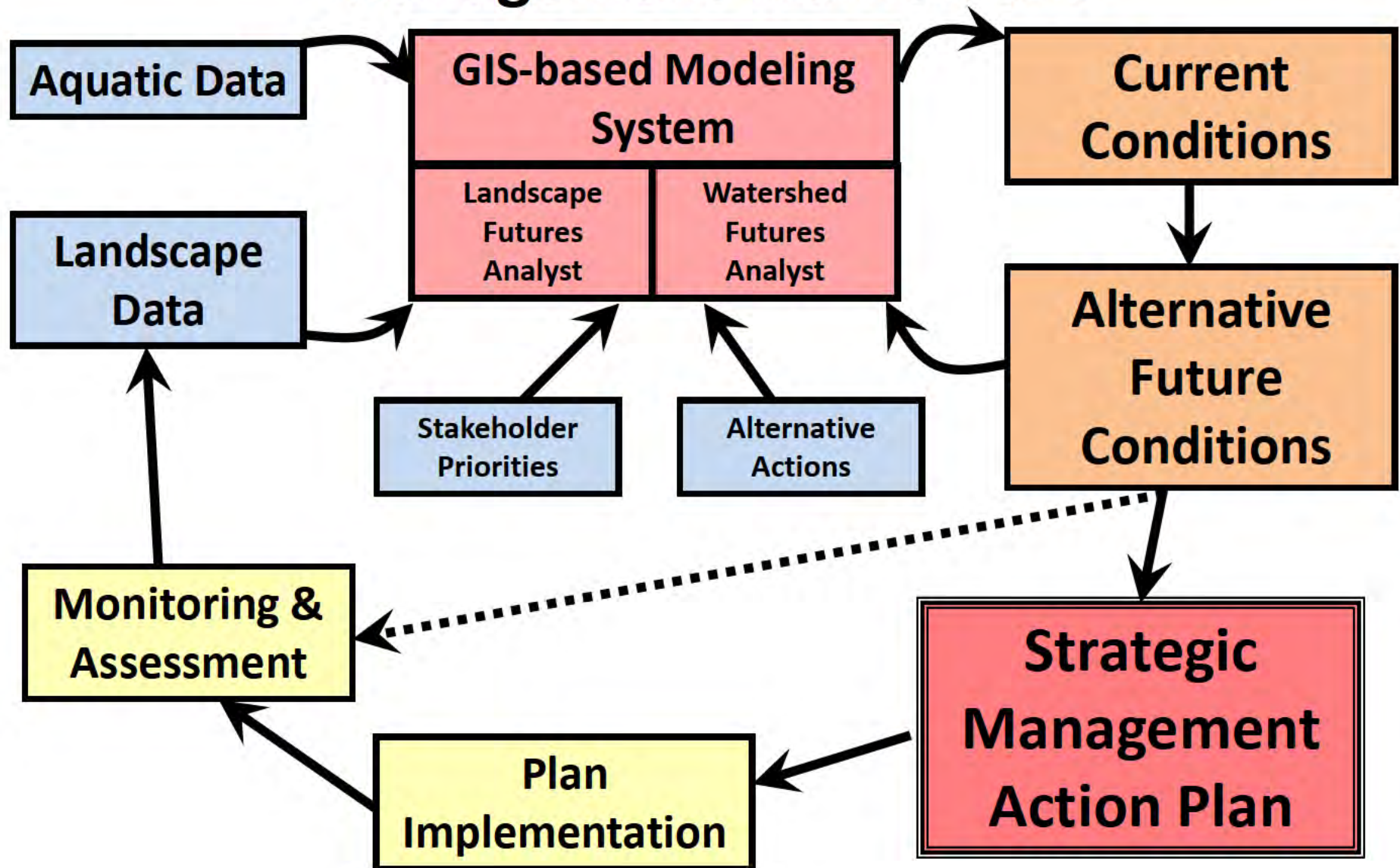


"Home"
 1 km^2

Key Elements: Alternative Futures vs. Cumulative Impact Perspectives

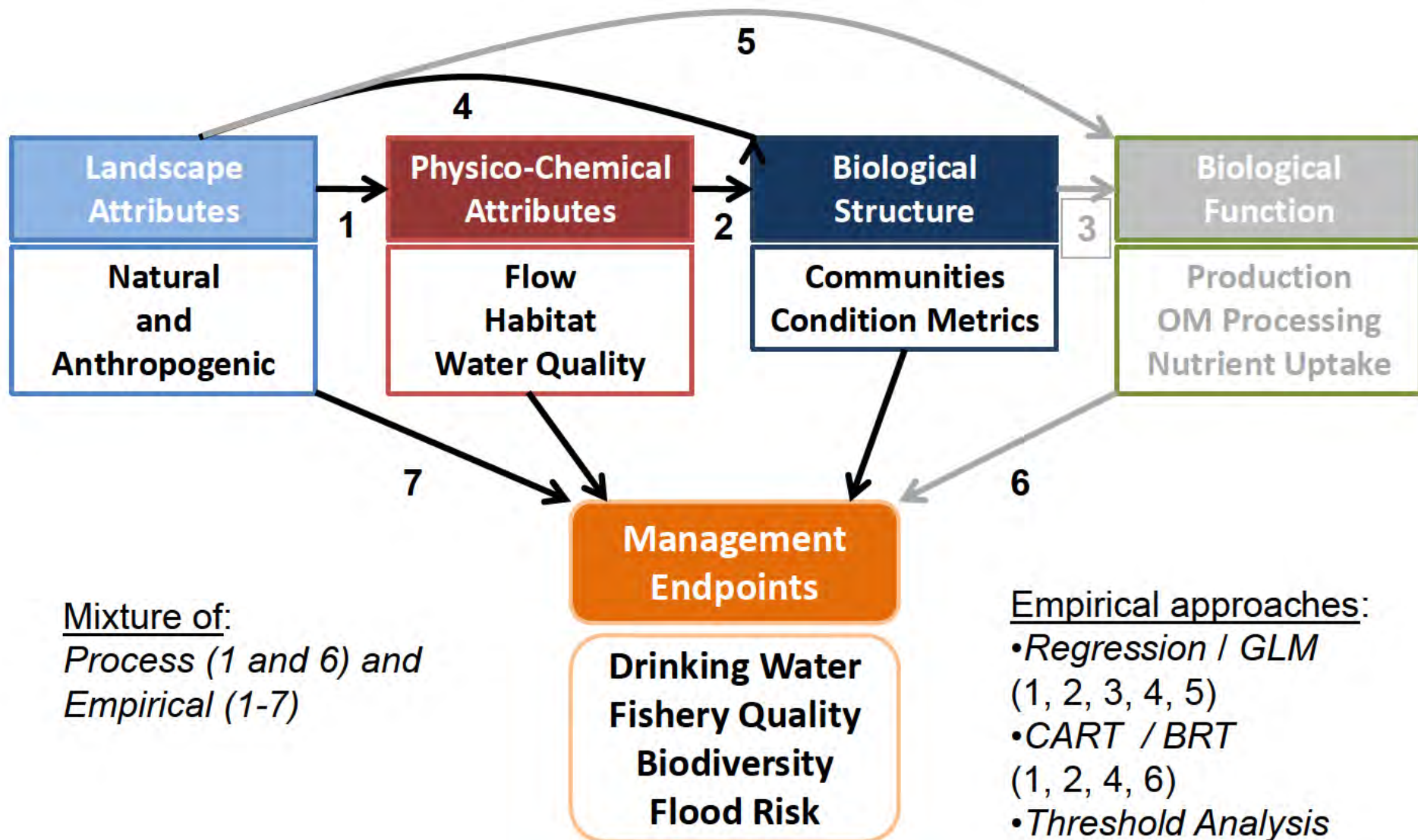


Key Elements: Modeling within an Adaptive Management Framework



Watershed Modeling, Alternative Futures & Cumulative Impact Assessment

Key Elements: Empirical Modeling



Mixture of:

*Process (1 and 6) and
Empirical (1-7)*

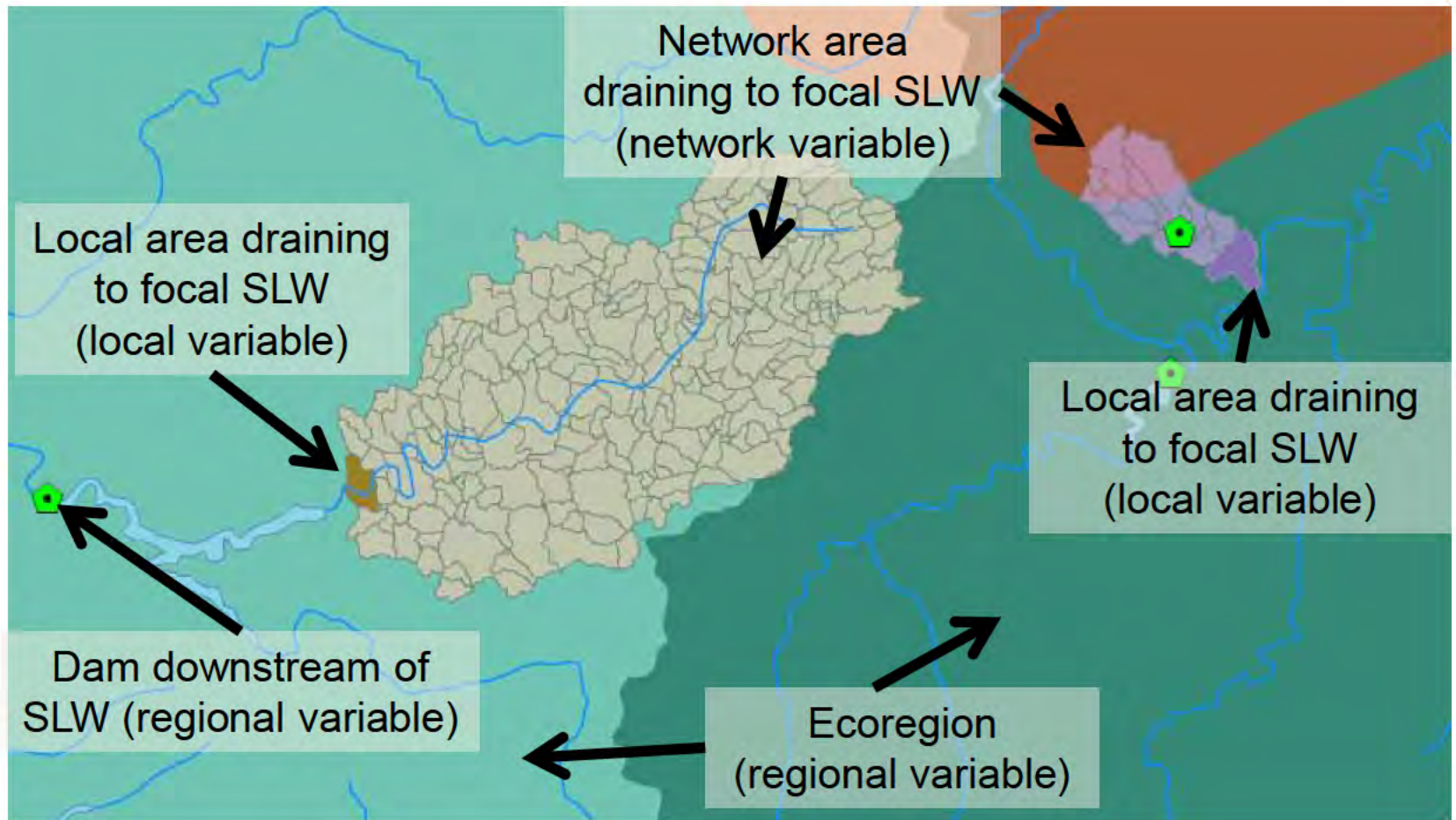
Empirical approaches:

- *Regression / GLM*
(1, 2, 3, 4, 5)
- *CART / BRT*
(1, 2, 4, 6)
- *Threshold Analysis*
(1, 2, 4, 6)

Landscape Predictor Variables

Predictor Variables	Examples
Local SLW - natural	Drainage area, dominant geology
Local SLW - anthropogenic	# NPDES permits, % impervious surface
Network - natural	% cumulative limestone
Network – anthropogenic	% cumulative riparian buffer
Regional – natural	Ecoregion, distance to species pool
Regional – anthropogenic	Isolation by dam, Regional mining intensity

Local vs. Network vs. Regional



Predictive Modeling

§ Predict current conditions

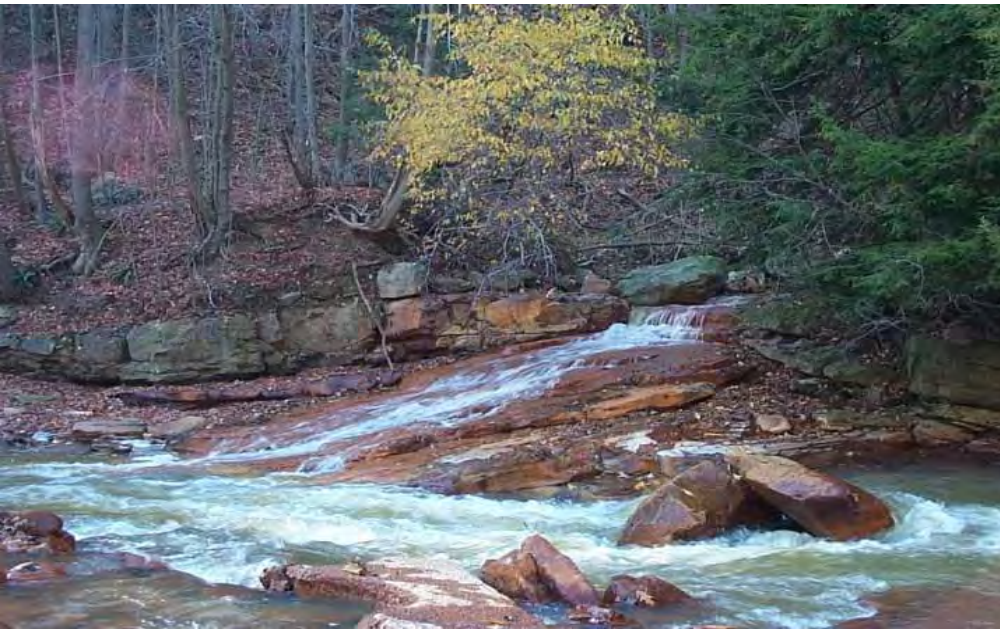
§ Measure of certainty

§ Model training and validation data

§ Emphasis on empirical methods

- Regression / GLM (spatial and non-spatial)
- CART / Boosted Regression Trees
- Bayesian Change Pt Analysis (TRITAN)

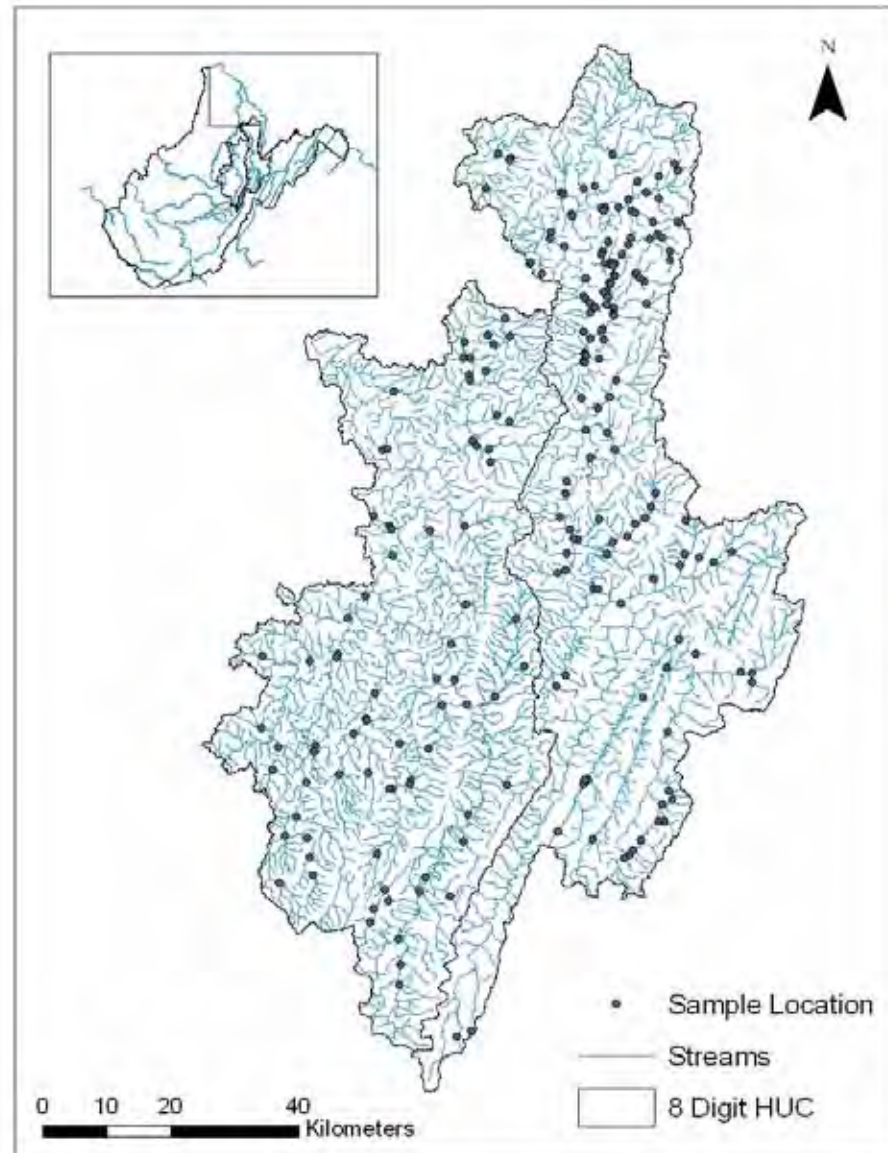
Watershed Studies in the Monongahela River Basin



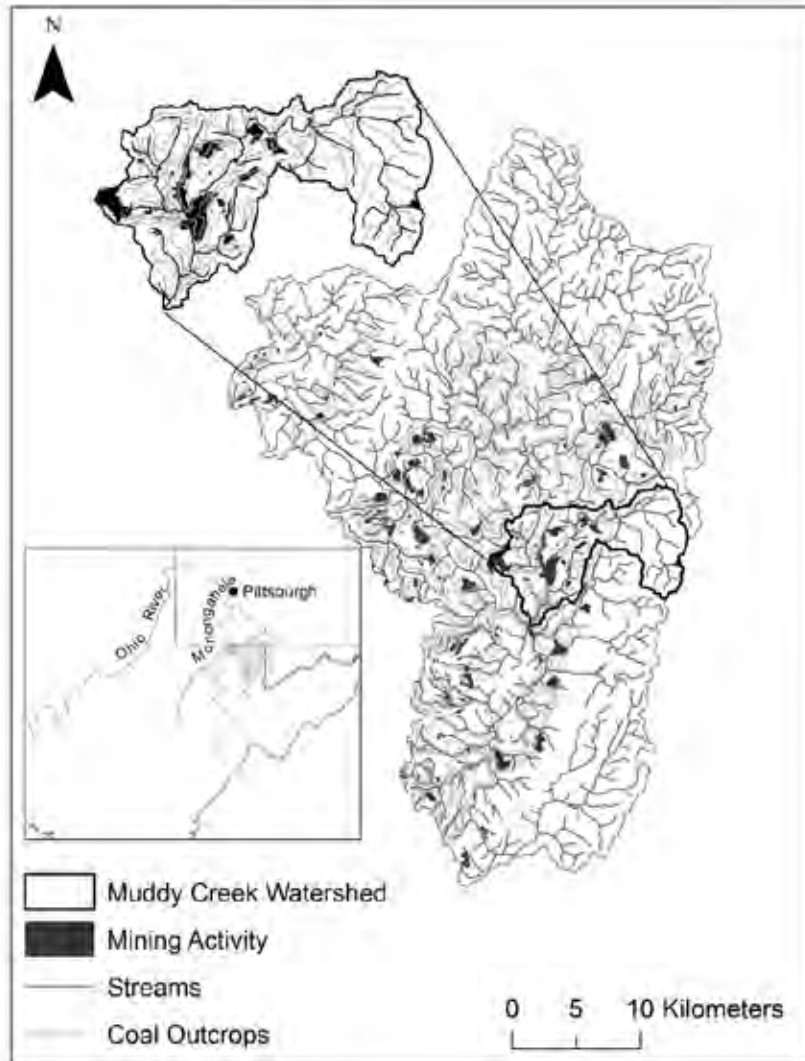
1. Predicting instream condition as a *function* (mining intensity, coal geology, and mine geography).
2. Quantifying thresholds of Local Impairment.
3. Conducting Alternative Futures Analysis modeling to determine the most efficient AMD remediation strategies.

Sites (n=127) in the Cheat and Tygart River watersheds sampled from 2003-2005.

- Mining Intensity
- Coal Geology (freeport, kittanning, pittsburgh)
- AMD Chemistry
- Flow
- Temperature
- Habitat Quality
- Invertebrates
- Fishes
- OM decomposition

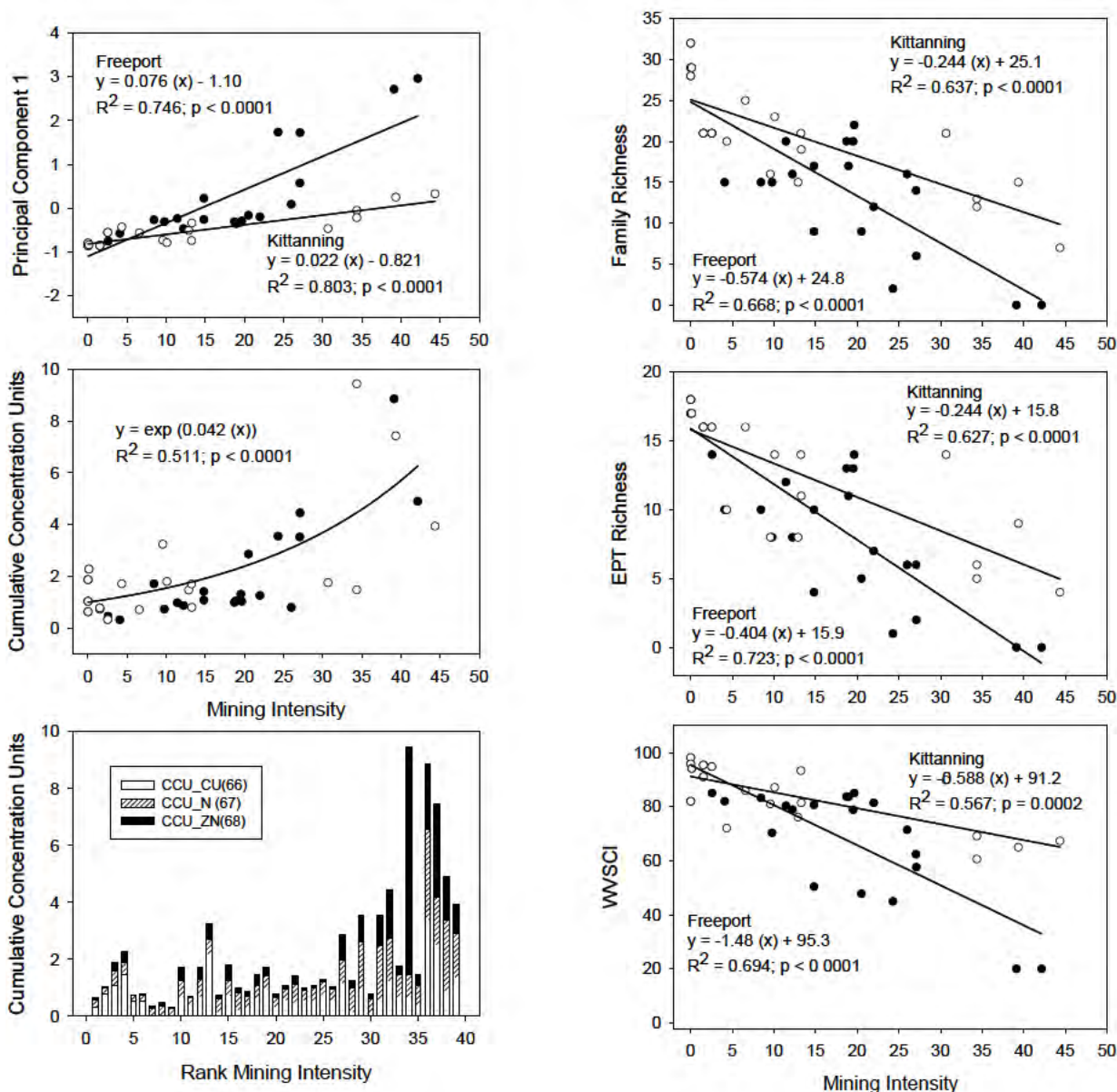


Mining Intensity, Mine Position, and Coal Geology



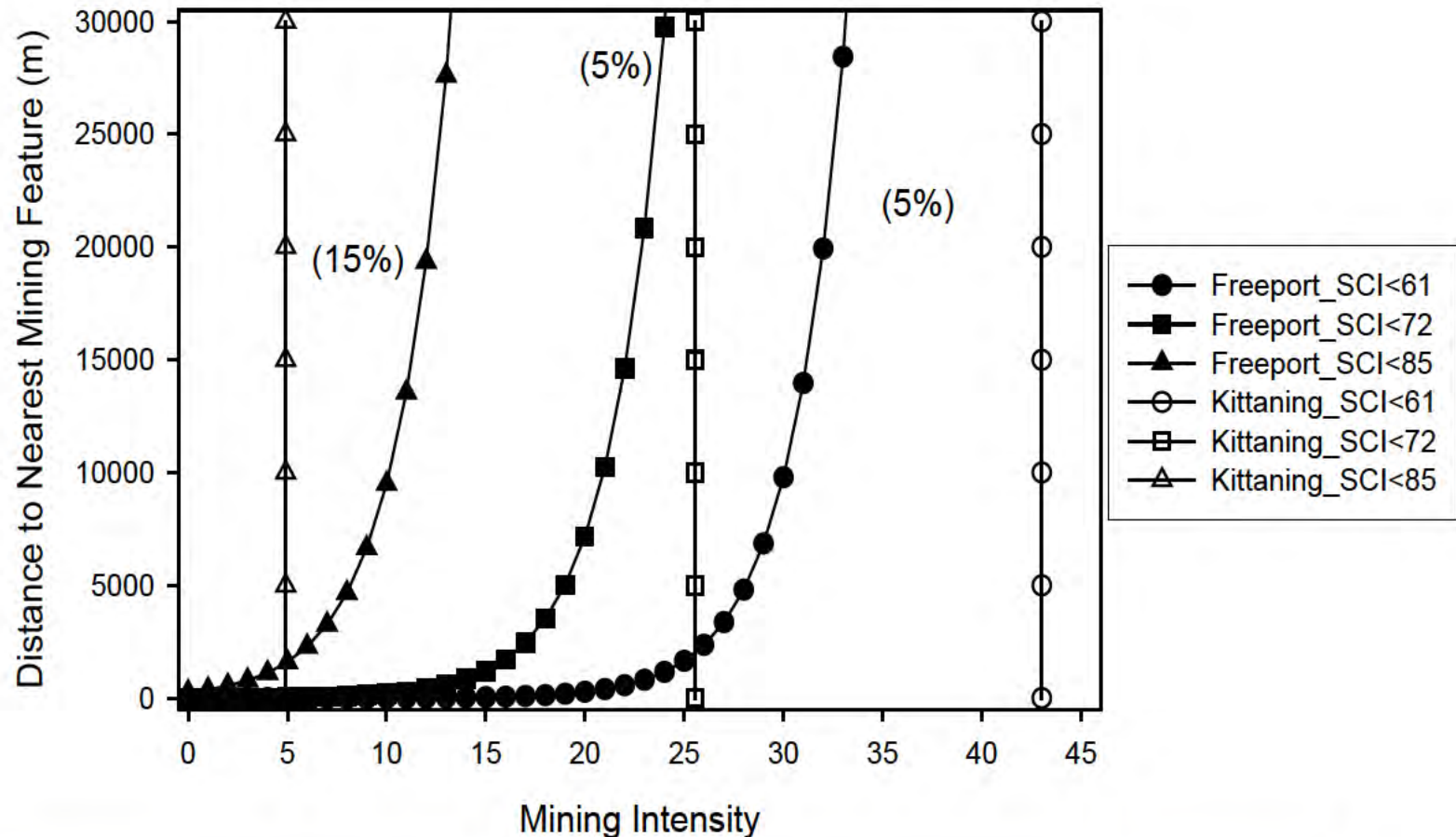
- % mined surface area draining to a stream
- Distance from a stream to the nearest upstream mine feature
- Dominant coal geology (Kittanning vs. Freeport)

Petty, J. T., Fulton, J. B., Merovich, G. T, Jr., Strager, M. P., Stiles, J., and Ziemkiewicz, P. F. 2010.
Landscape indicators and thresholds of ecological impairment in an intensively mined
Appalachian watershed. *Journal of the North American Benthological Society*.



Mining Thresholds - Northern Coalfields

"Functional" Thresholds

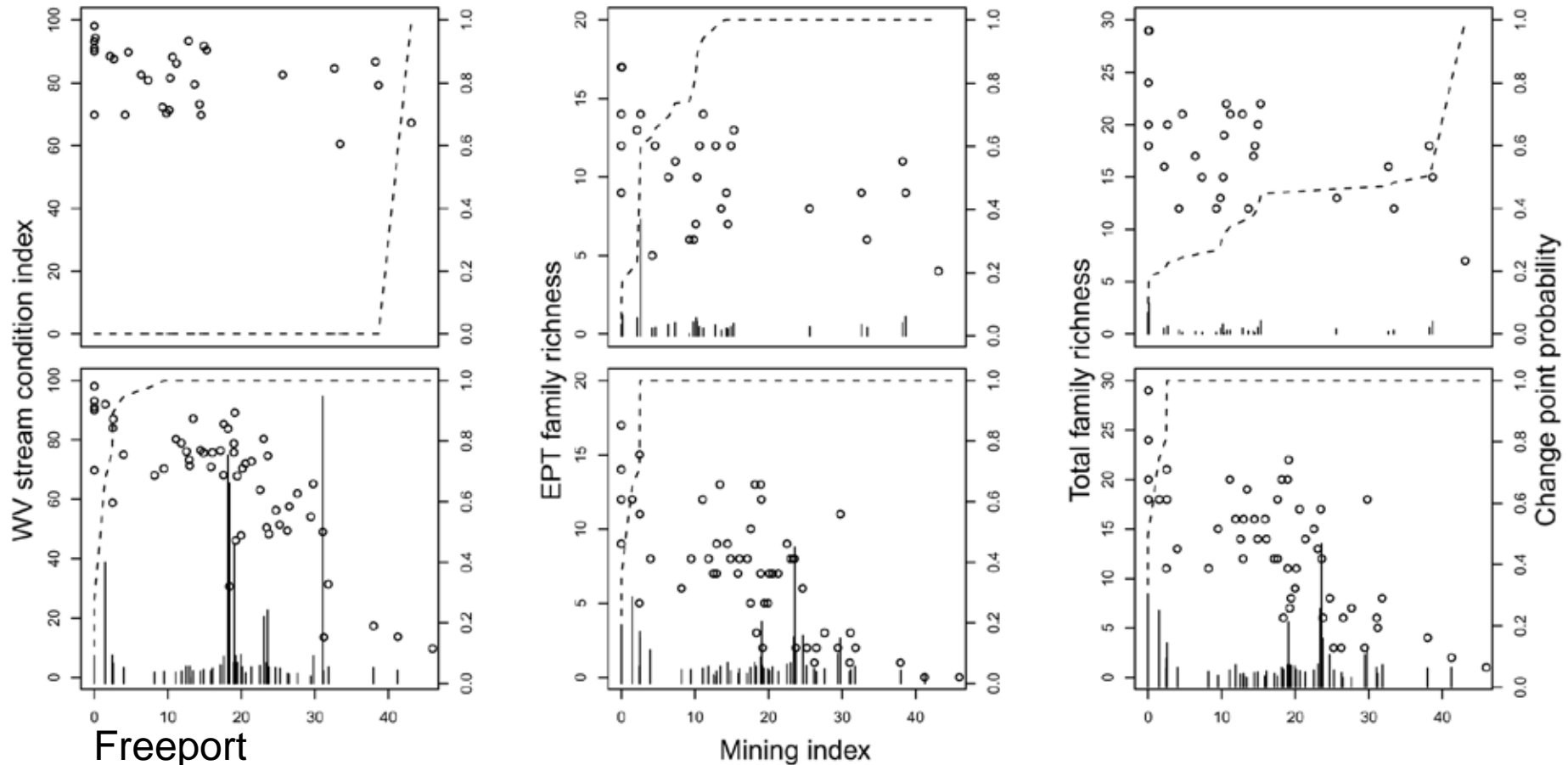


% mining thresholds in freeport coal dominated watersheds vary as a function mine position relative to the receiving waterbody.

Mining Thresholds - Northern Coalfields

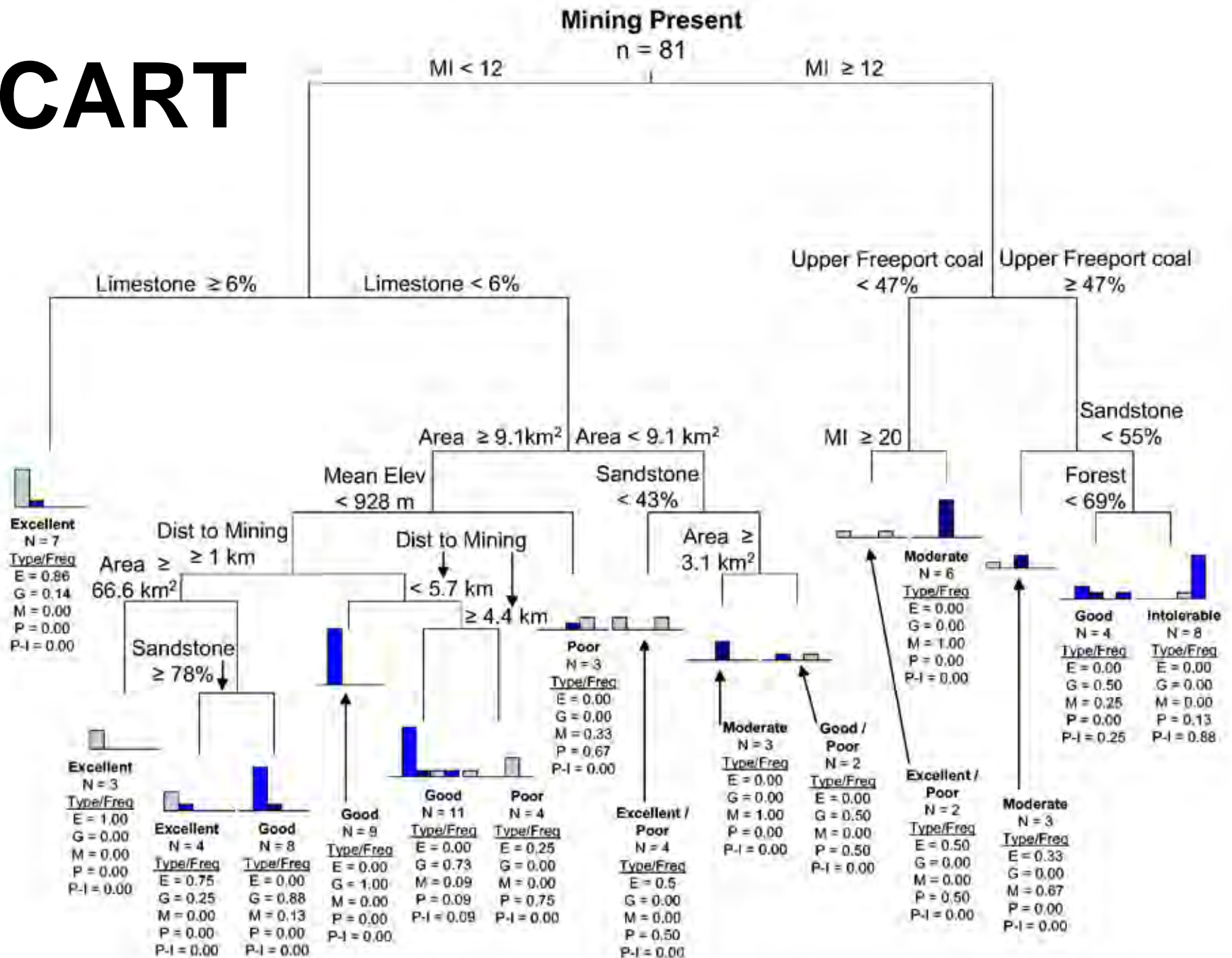
Bayesian Change Point Analysis

Kittanning

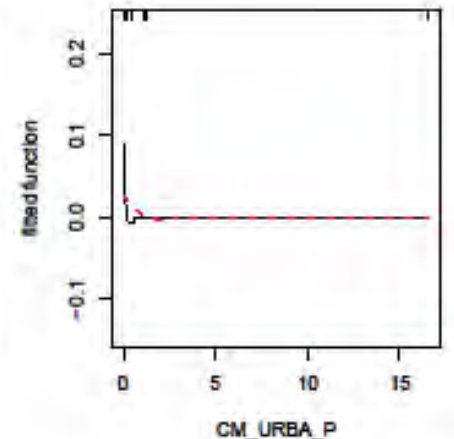
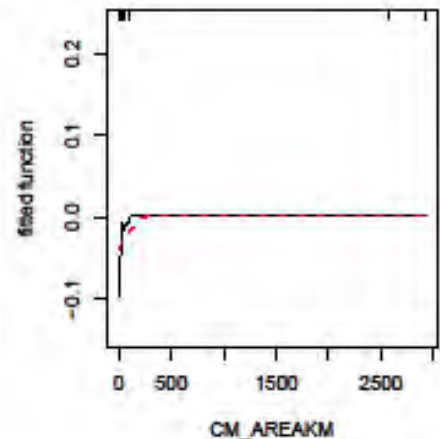
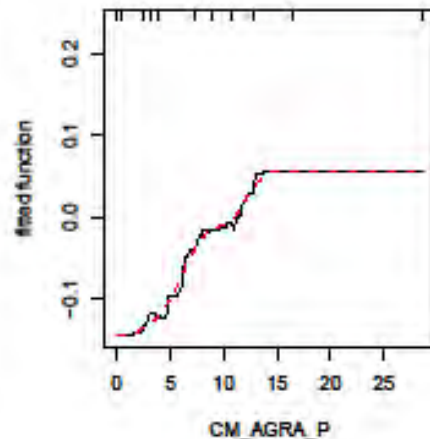
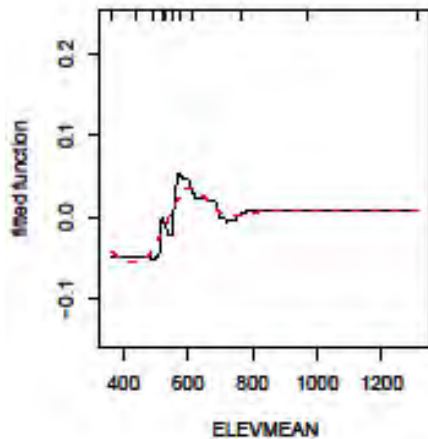
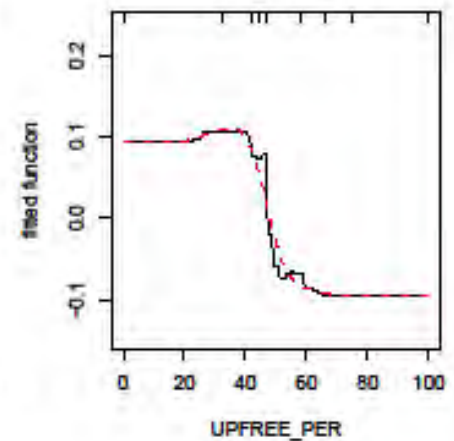
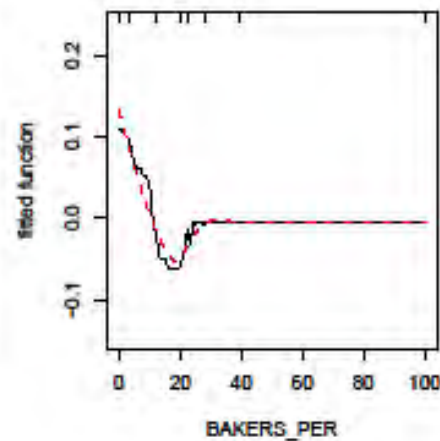
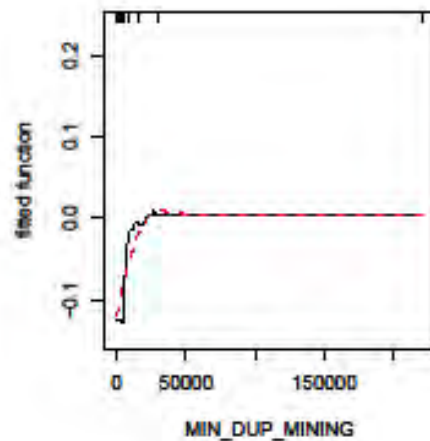
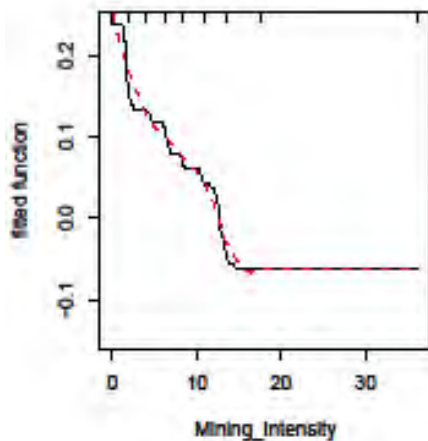


5% mining – consistent loss of HQ conditions (coldwater relevance)
20% mining – consistent change to “impaired” conditions.
30% mining – total carnage

CART

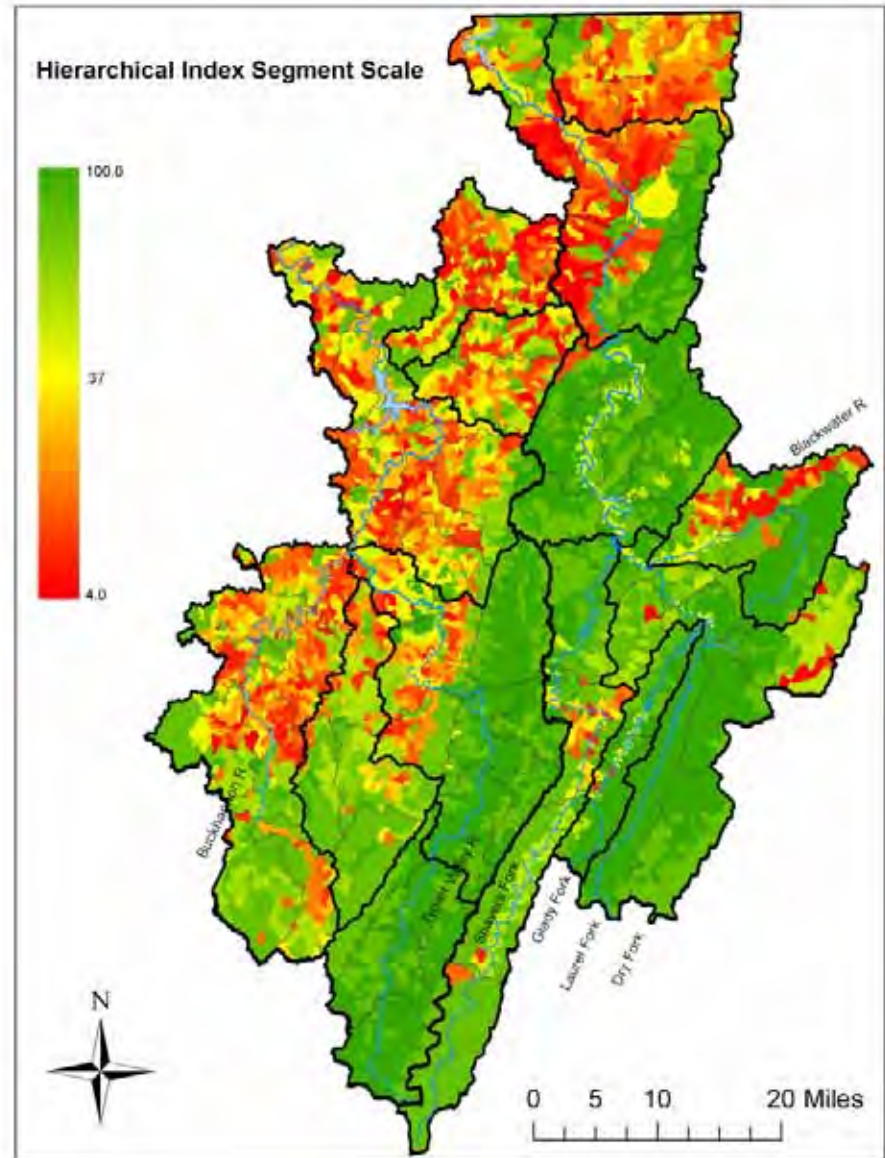


Boosted Regression Trees



Current Conditions in the Mon River Basin

- Regression was used to make final predictions due to high certainty of the models.
- Condition is a function of:
 - Mining intensity
 - Coal Geology
 - Flow distance to a mine
 - Underground vs. Surface mining
 - Bedrock geology
- Map is 95% “correct”

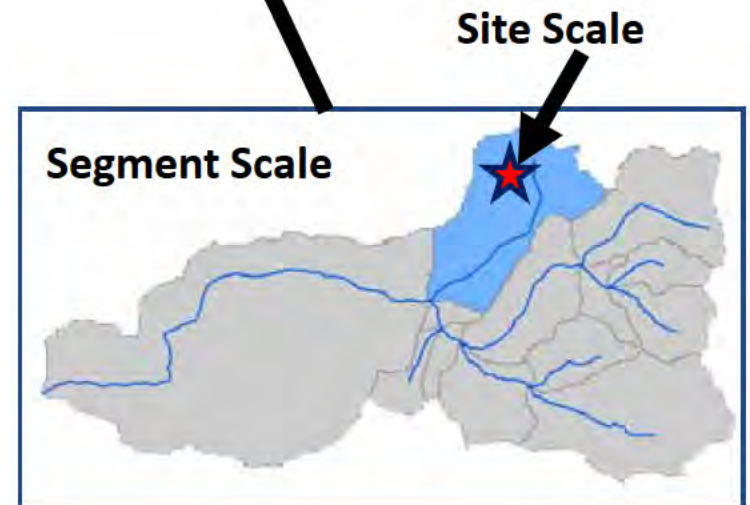
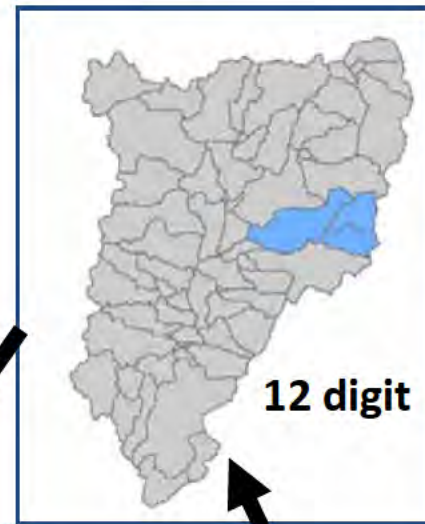
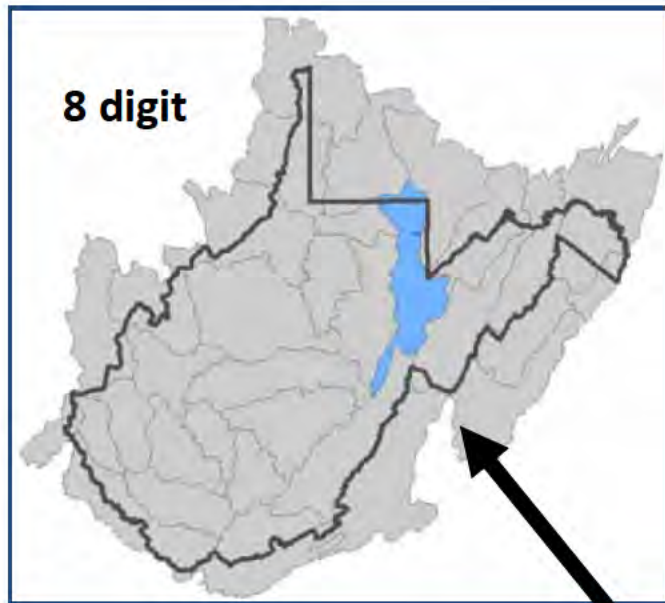


A Decision Support System for AML Remediation in WV



**Maximize ecological benefits of AML
remediation at the 10 Digit HUC scale
per \$ invested.**

Relevant Spatial Scales



Application to the AML Problem

STEP 1 – Select a Targeted Watershed (10 Digit HUC scale).

STEP 2 – Describe the current condition landscape (Cold- and Warm- Water Fishery Units).

STEP 3 – Design alternative placement of treatment technologies (idealized at-source vs. strategic alternatives with mix of instream and at-source).

STEP 4 – Calculate Recoverable Fishery Units associated with each alternative.

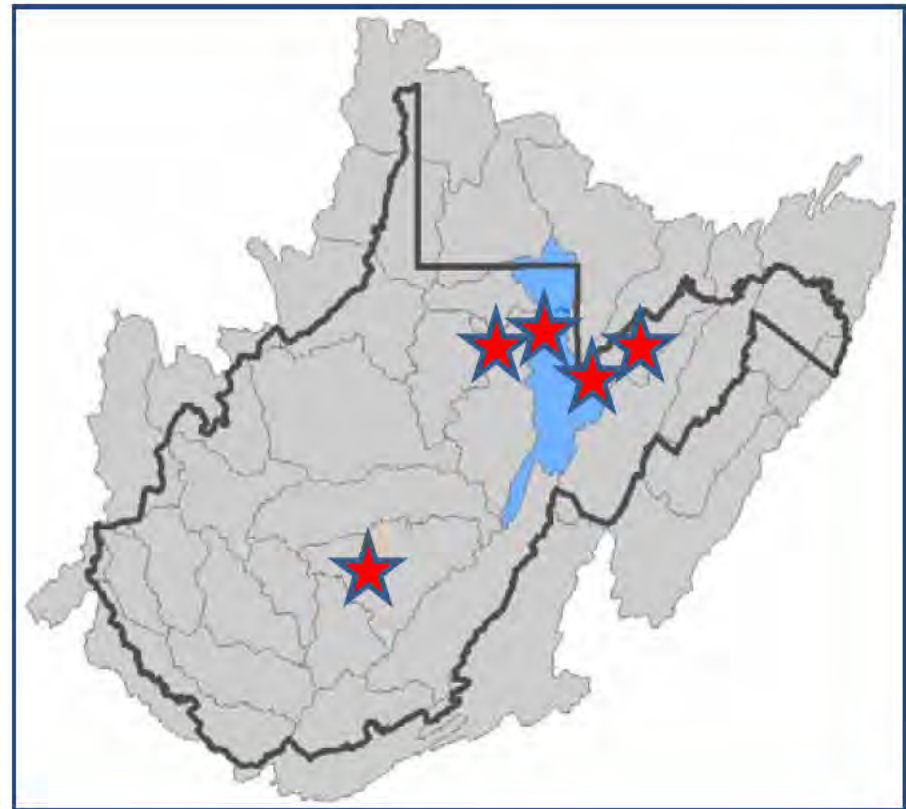
STEP 5 – Calculate \$ costs and benefits and Net Present Values associated with each Alternative.

STEP 6 – Implement monitoring program designed to quantify benefits of restoration plan.

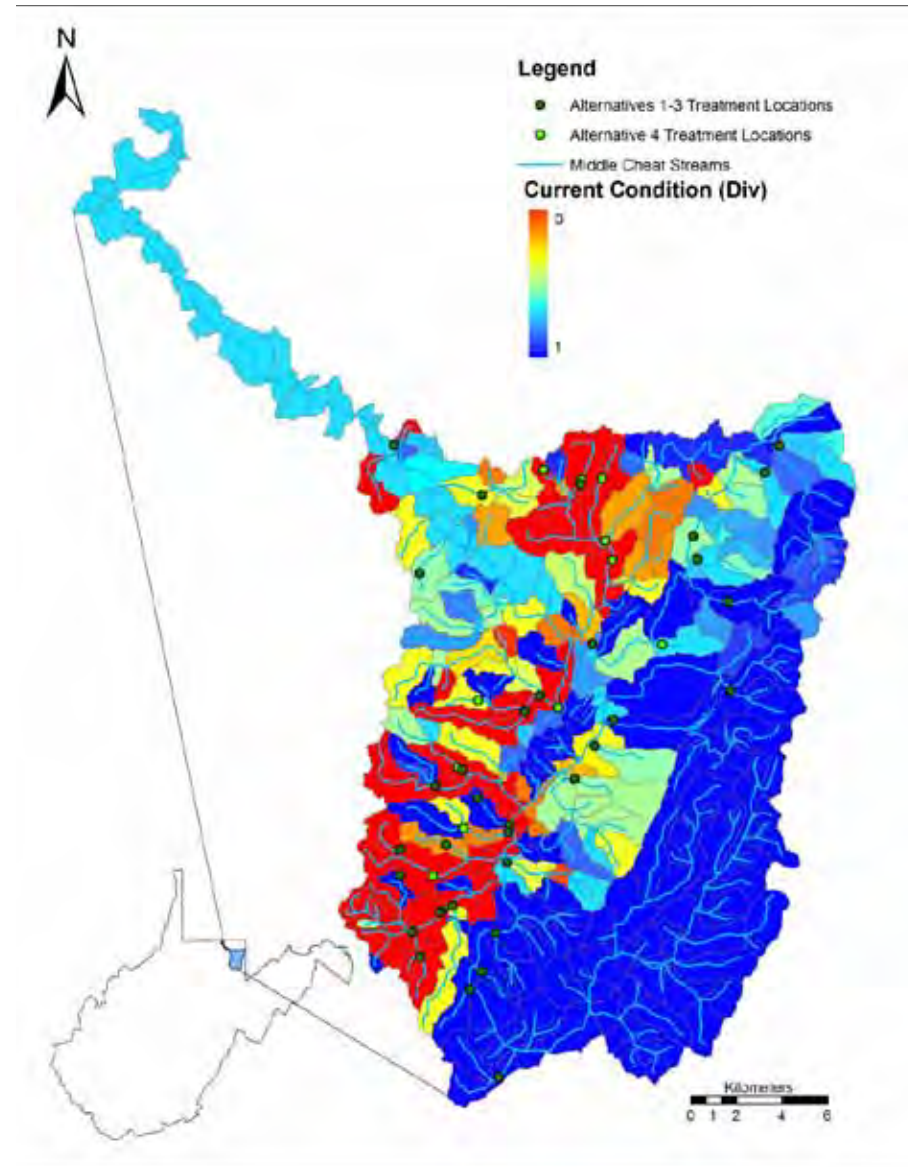
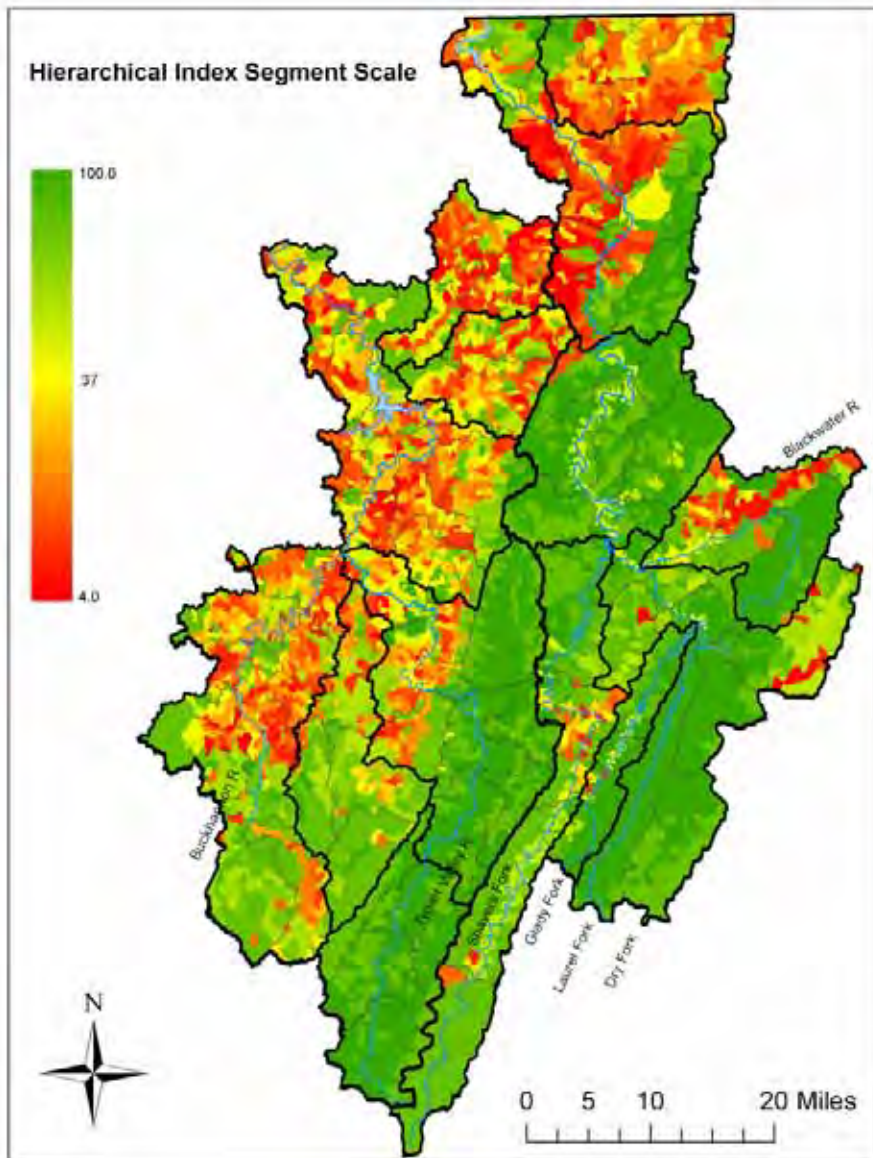
Optimal Restoration Plans for WV Watersheds

<http://www.wri.nrcce.wvu.edu/programs/wvamdsrag/>
password = 'fish'

- Abram Creek of NB Potomac River
- Three Fork Creek of Tygart Valley River
- Middle Cheat River (Pringle – Big Sandy)
- NF Blackwater River of Cheat River
- Paint Creek of Kanawha



Step 2 – Current Conditions



Current Conditions in Middle Cheat

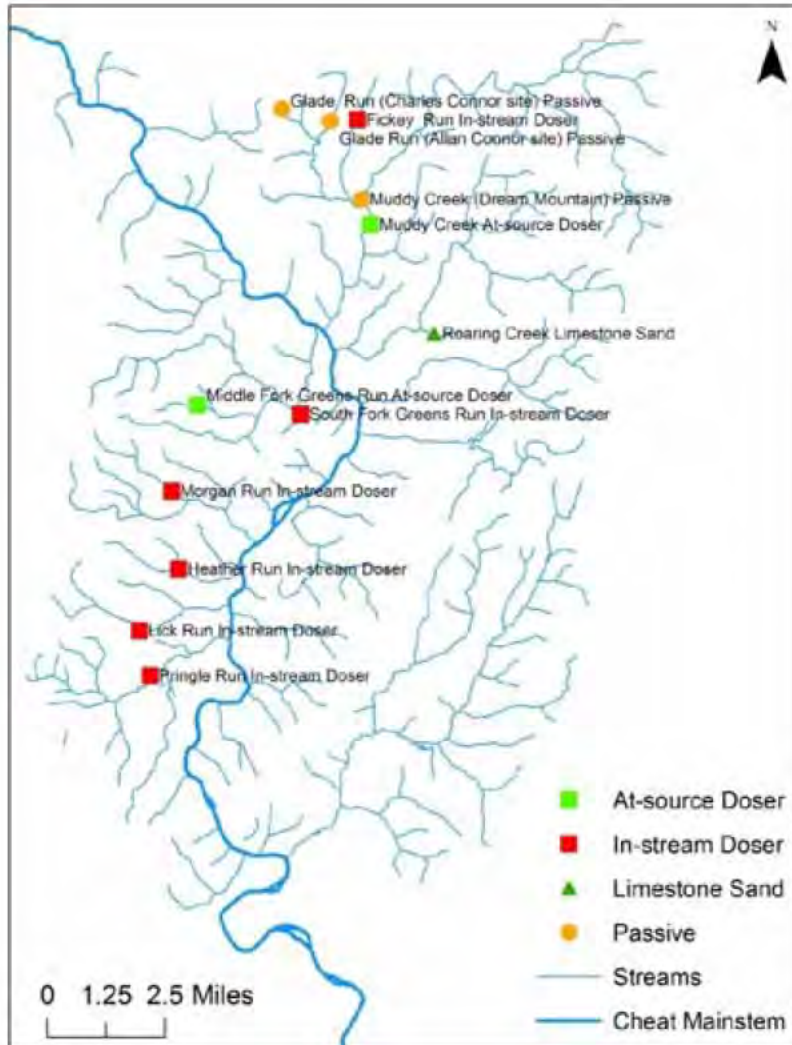
	Diversity	EcoUnits (miles)		
		Coldwater Fishery	Warmwater Fishery	Overall Fishery
HEUs	332	258	50	326
CEUs	235	132	28	171
LEUs	96	126	21	155

HEUs = Historic Eco-Units

CEUs = Current Eco-Units

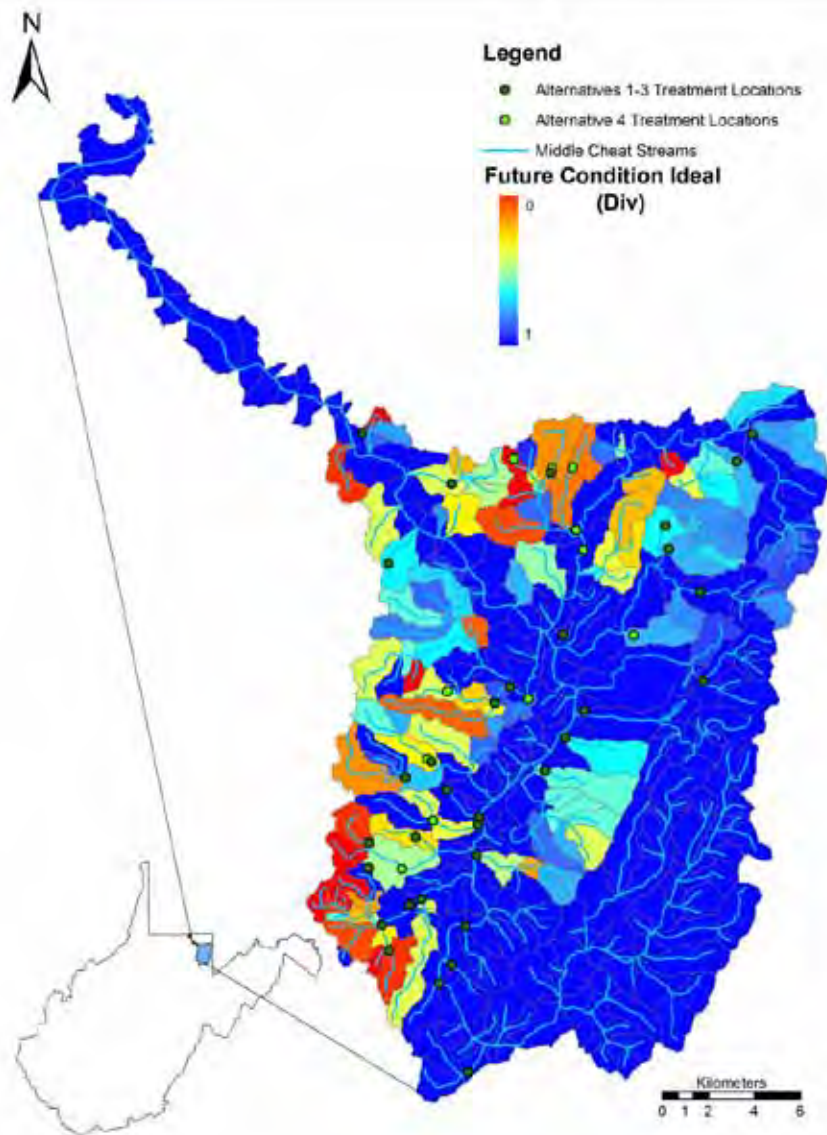
LEUs = Lost Eco-Units

STEP 3 – Alternative Treatment Strategies (technology and placement)

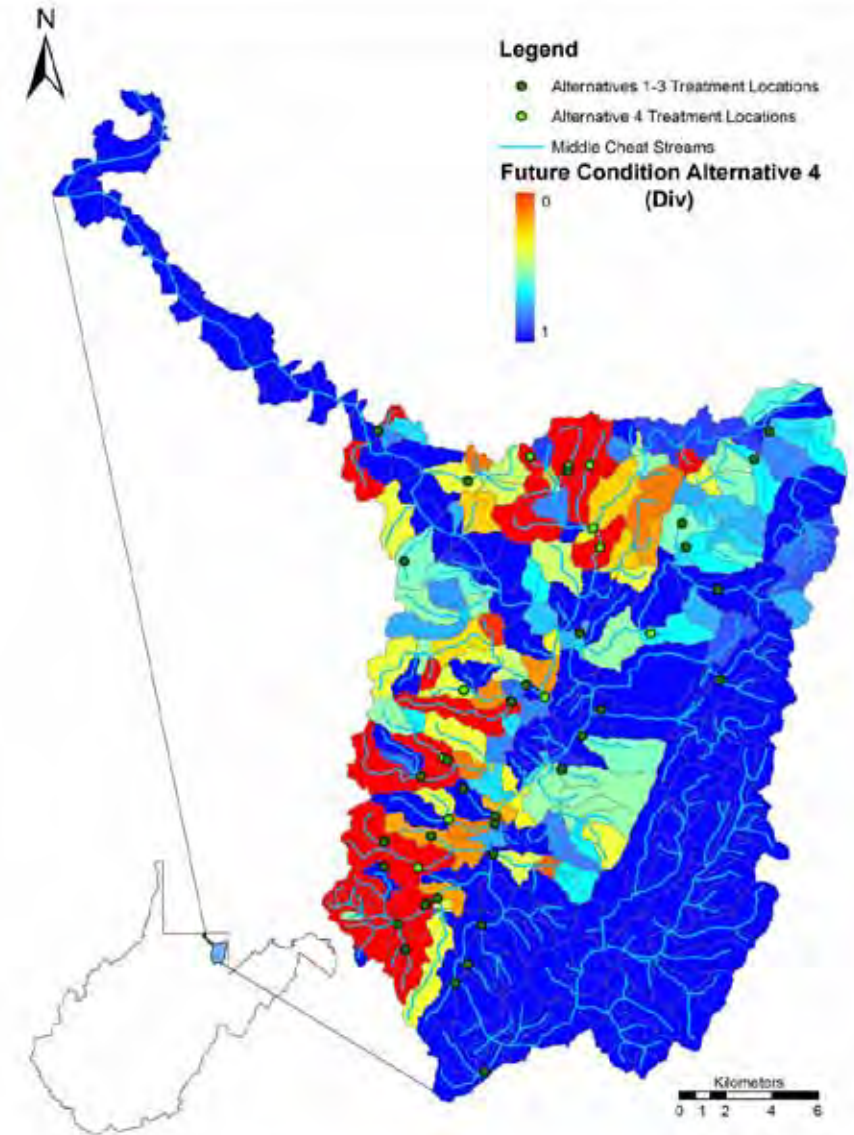


1. I-S Headwater Dosing
2. Full At-Source Dosing
3. Full A-S Passive with In-Stream Finishing Dosers
4. Strategic Alternative

Step 4 – Calculate REUs and FEUs for various alternatives



Future Condition – Ideal



Future Condition – Alt 4

REUs in Middle Cheat

Alternative	Diversity	Restorable EcoUnits (miles)		
		Coldwater Fishery	Warmwater Fishery	Overall Fishery
Ideal	41	27	21	56
1	13	0.5	14	19
2 / 3	31	10	21	38
4	19	4	19	25

Step 5 – Calculate NPVs for each Alternative

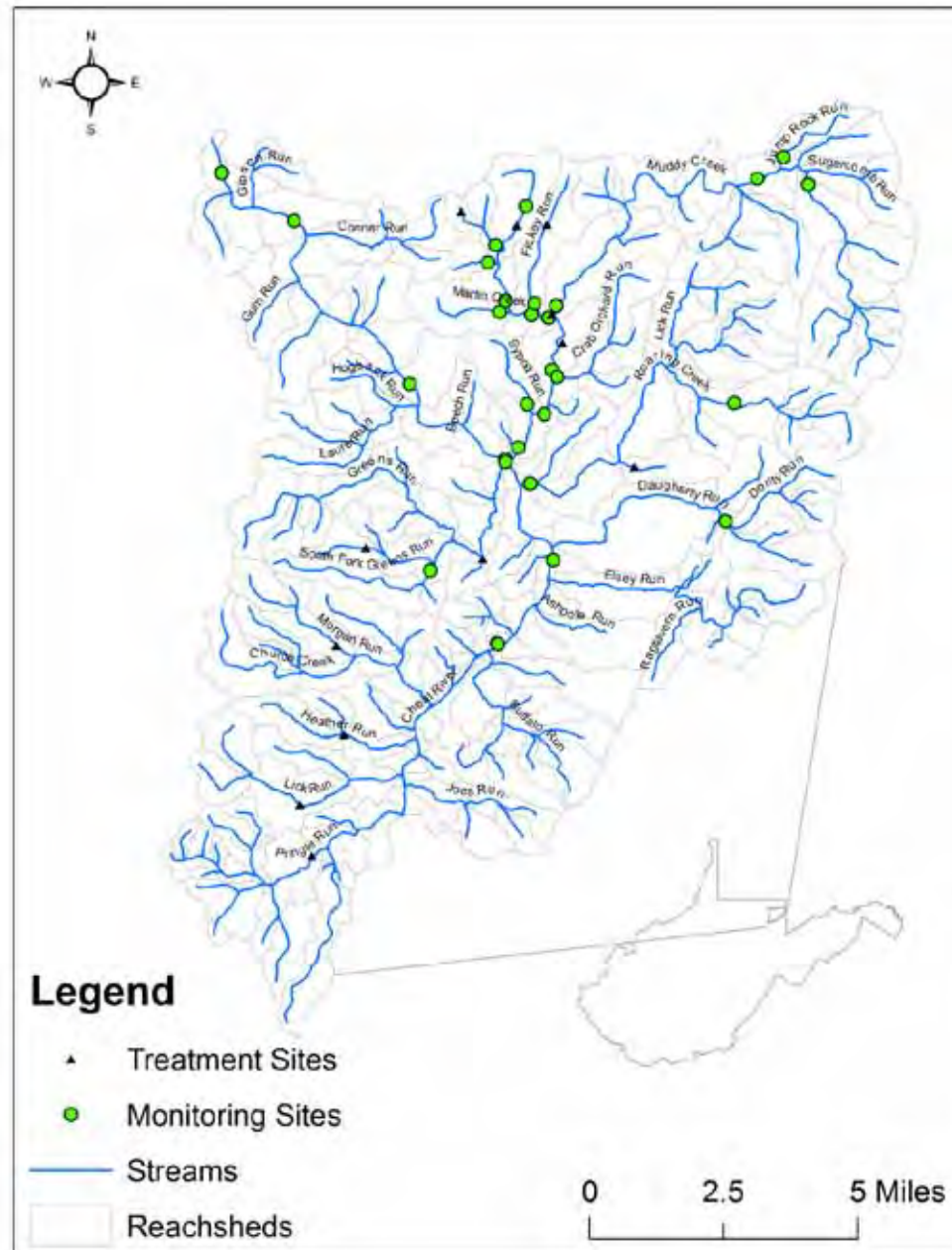
Annual Costs, Present Value*				
(2007 dollars, discounted at 3%)				
Alternative	1 Year Project	5 Year Project	10 Year Project	20 Year Project
1	1,628,356	7,681,117	14,306,916	24,952,605
2	1,768,628	8,342,793	15,539,360	27,102,103
3	1,528,350	7,209,380	13,428,254	23,420,136
4	286,340	1,350,693	2,515,813	4,387,814

Total Cost over Project Lifetime, Present Value*				
(2007 dollars, discounted at 3%)				
Alternative	1 Year Project	5 Year Project	10 Year Project	20 Year Project
1	6,878,356	12,931,117	19,556,916	30,202,605
2	13,468,628	20,042,793	27,239,360	38,802,103
3	20,604,987	26,286,017	32,504,891	42,496,773
4	3,876,622	4,940,975	6,106,095	7,978,096

Net Present Value of Alternatives, Overall Fishery				
(2007 dollars, discounted at 3%)				
Alternative	Total 1 Year	Total 5 Year	Total 10 Year	Total 20 Year
1	(6,878,356)	(11,453,887)	(15,888,246)	(23,004,288)
2	(13,468,628)	(17,111,414)	(19,959,343)	(24,517,941)
3	(20,604,987)	(23,354,638)	(25,224,875)	(28,212,612)
4	(3,876,622)	(2,985,953)	(1,250,840)	1,548,428

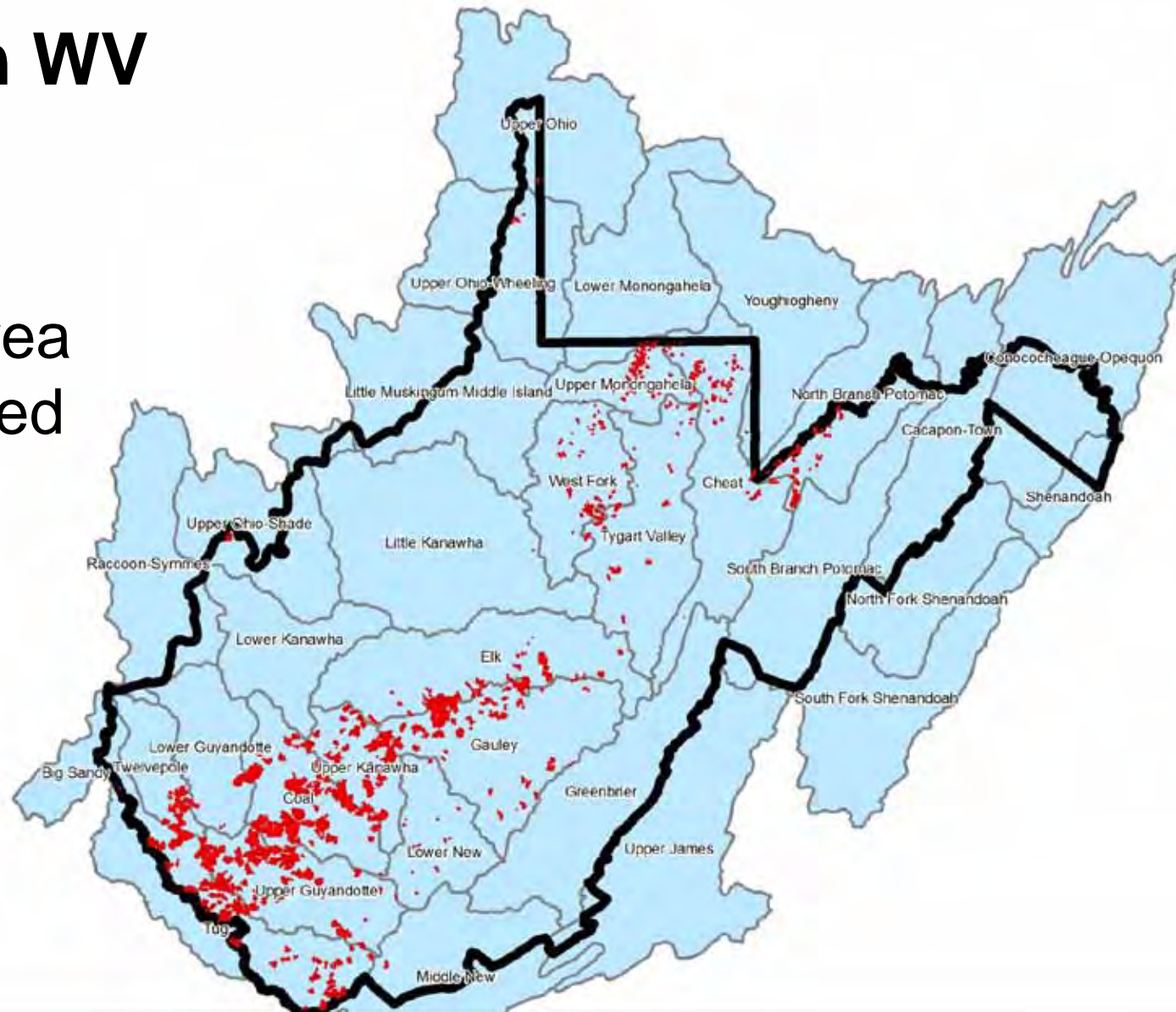
NPV = (total benefit – total cost) x annual discounting factor.
Fishery benefits = \$28,000 / fishery mile (from USFWS 2006).
Benefits (from restored fishery miles) begin accruing in year 3.
Parentheses indicate a net cost to restoration.

Step 6 – Design and initiate monitoring program

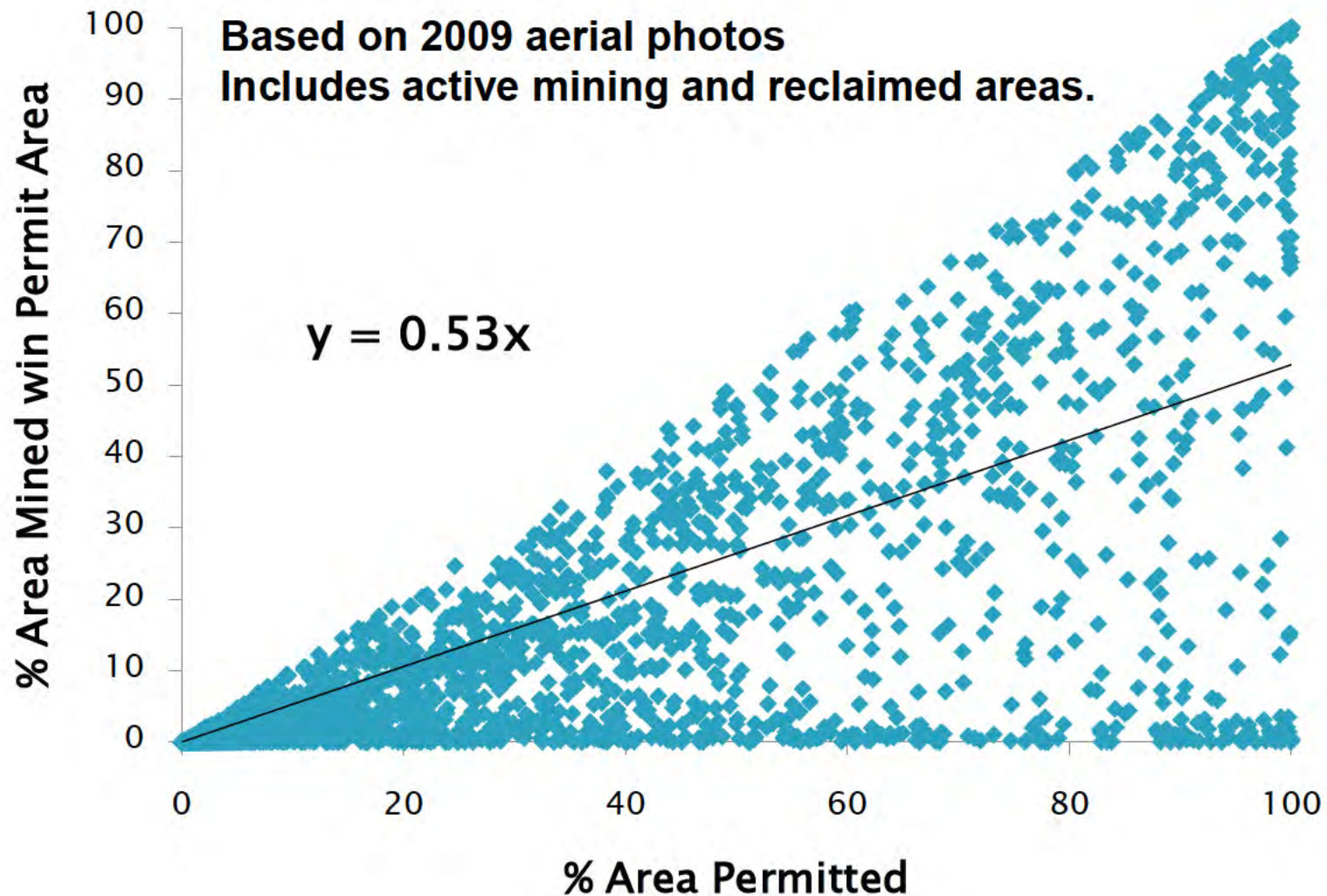


Permitted Surface Mines in WV

53% of this area
has been mined



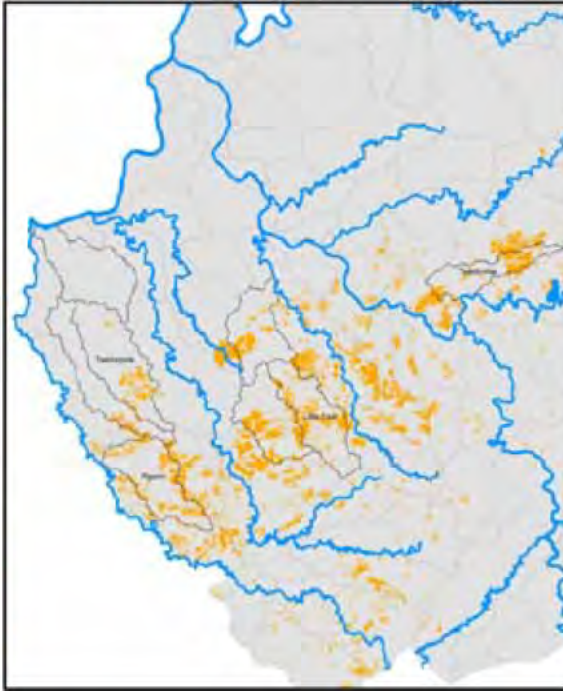
Area Permitted vs. Area Mined



Coal Geology



Mining Intensity



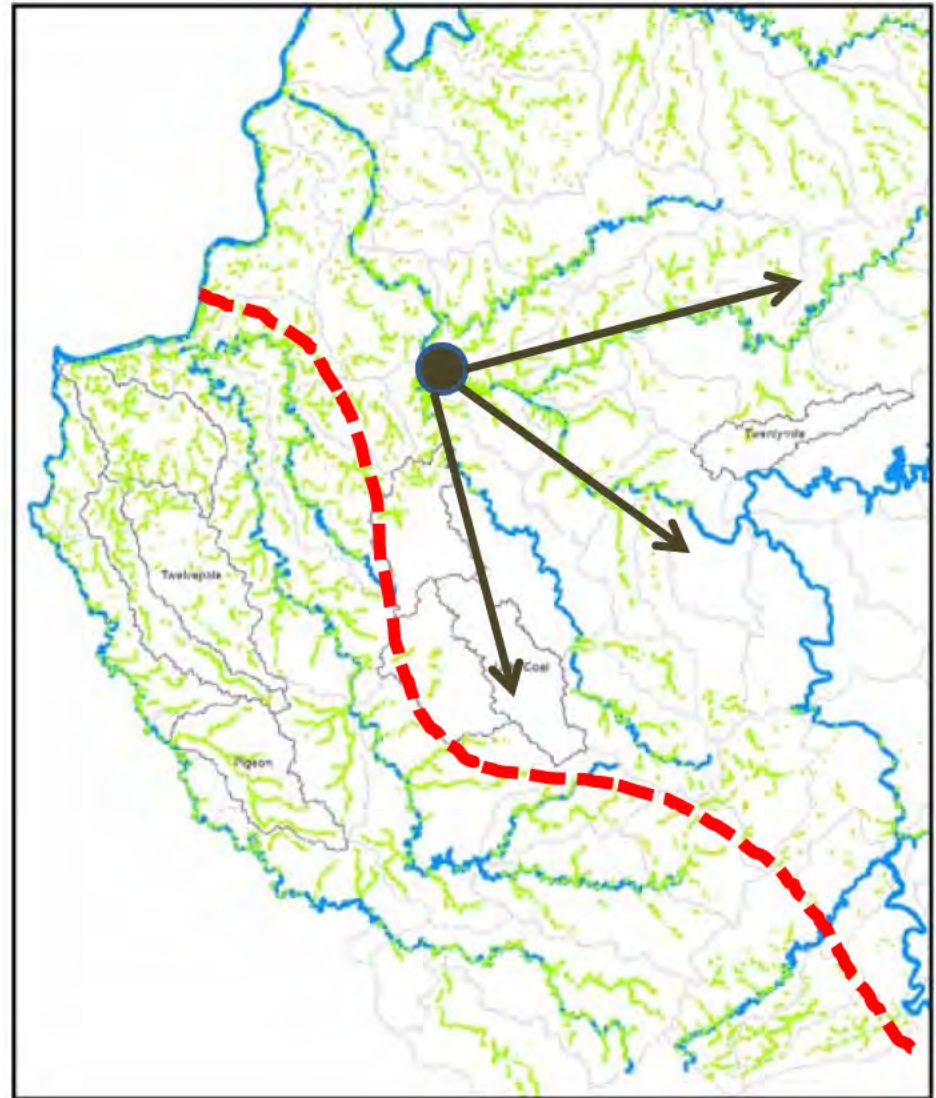
Residences



Critical need to build predictive models linking landscape and instream attributes across the full range of coal geology, mining intensity, and residential development.

Untreated Wastewater

- Wastewater services are spotty at best.
- Not bad in watersheds that are well linked to population centers (e.g., Coal, Elk, and Gauley).
- Awful in isolated watersheds (e.g., Guyandotte, Twelvepole, and Tug).
- Widespread contamination from untreated wastewater, esp “gray water.”



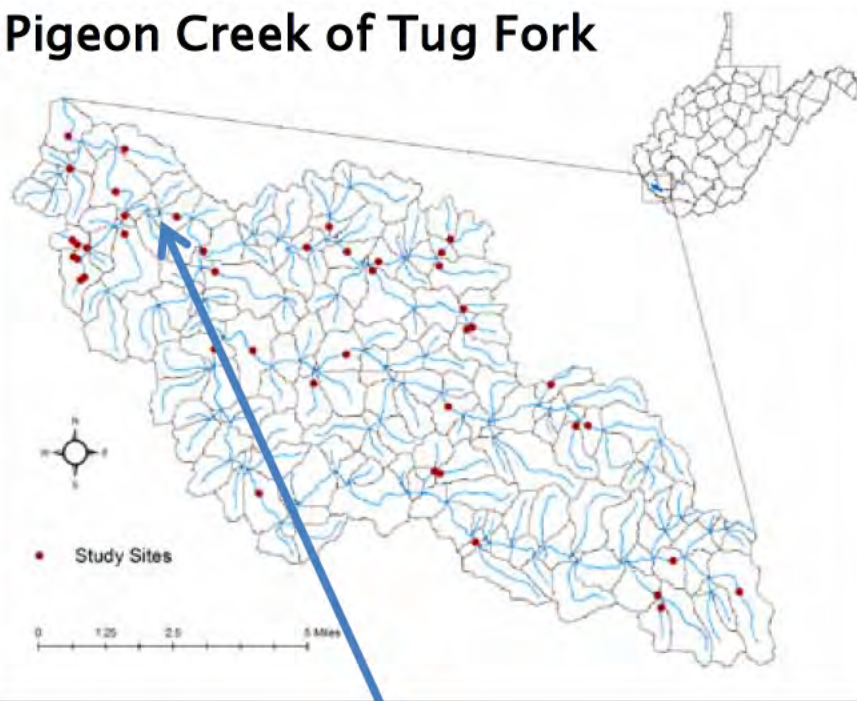


Relatively high densities packed along stream valleys.

Straight-piped “gray” water.

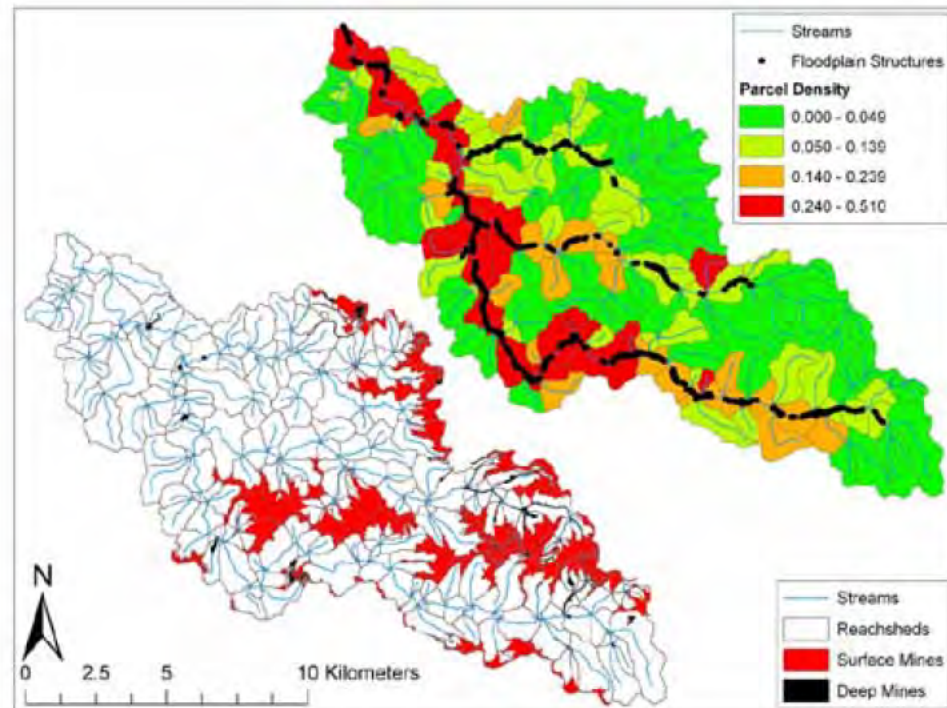


Pigeon Creek of Tug Fork

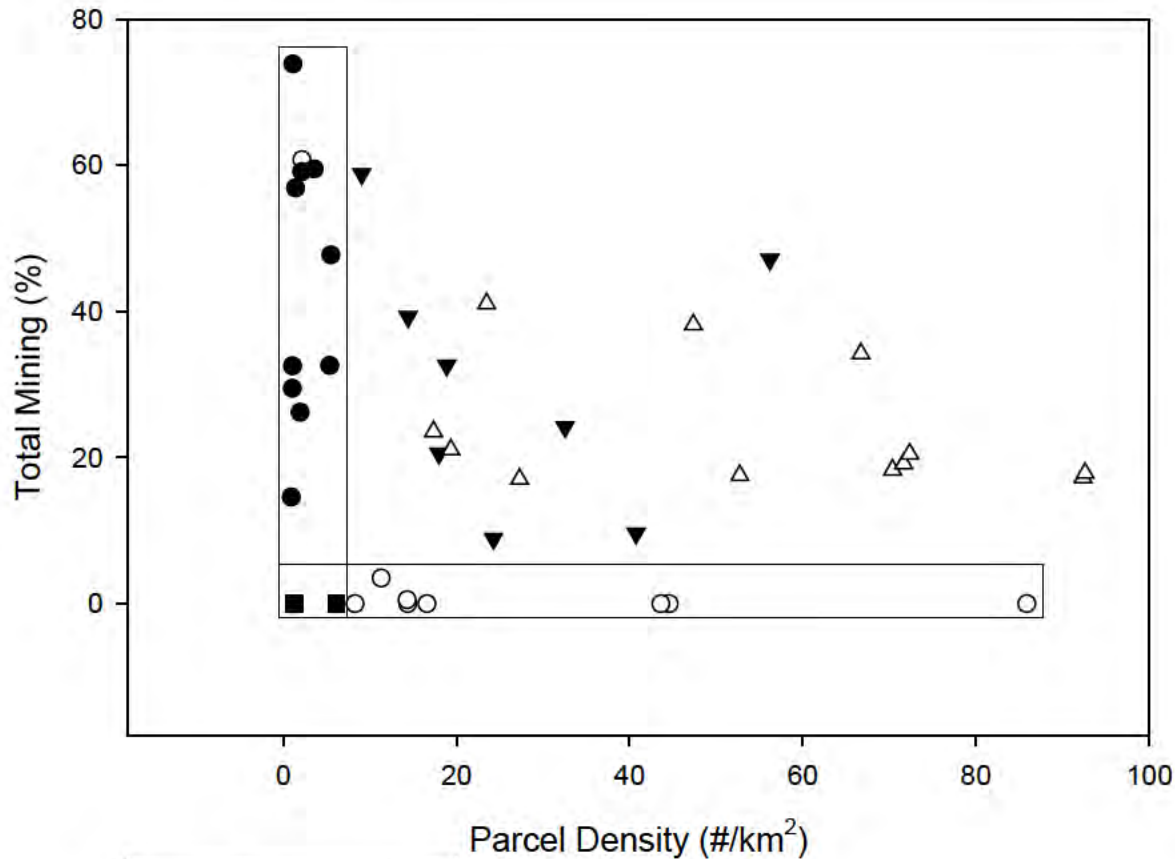


Additive Effects of Multiple Stressors

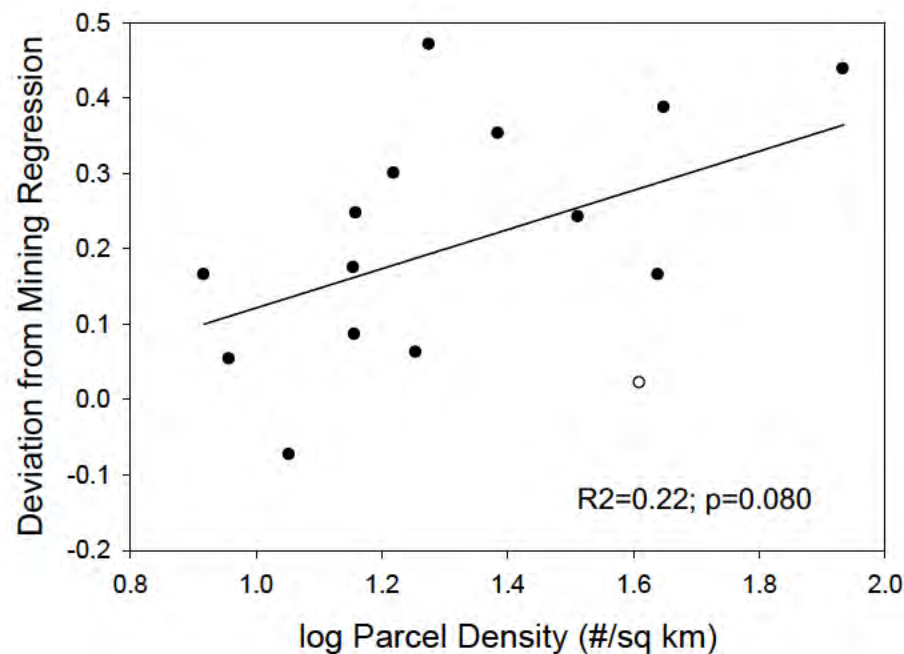
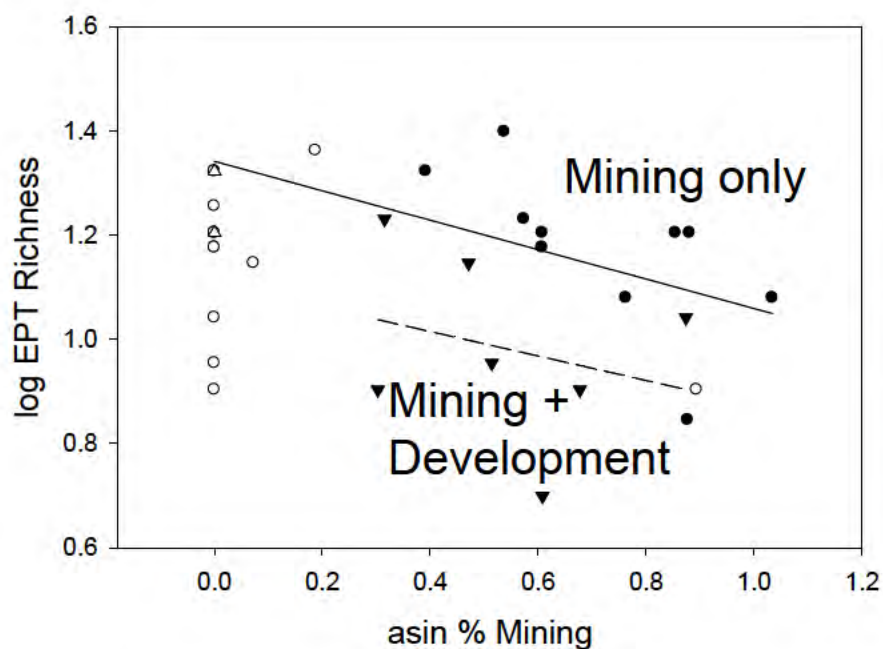
- Pigeon Creek is a wreck.
- How much of the impairment can be attributed to mining?
- How much can be attributed to the interaction of mining with other stressors?
- Can we visualize a brighter future and what would that involve?



Pigeon Creek Design

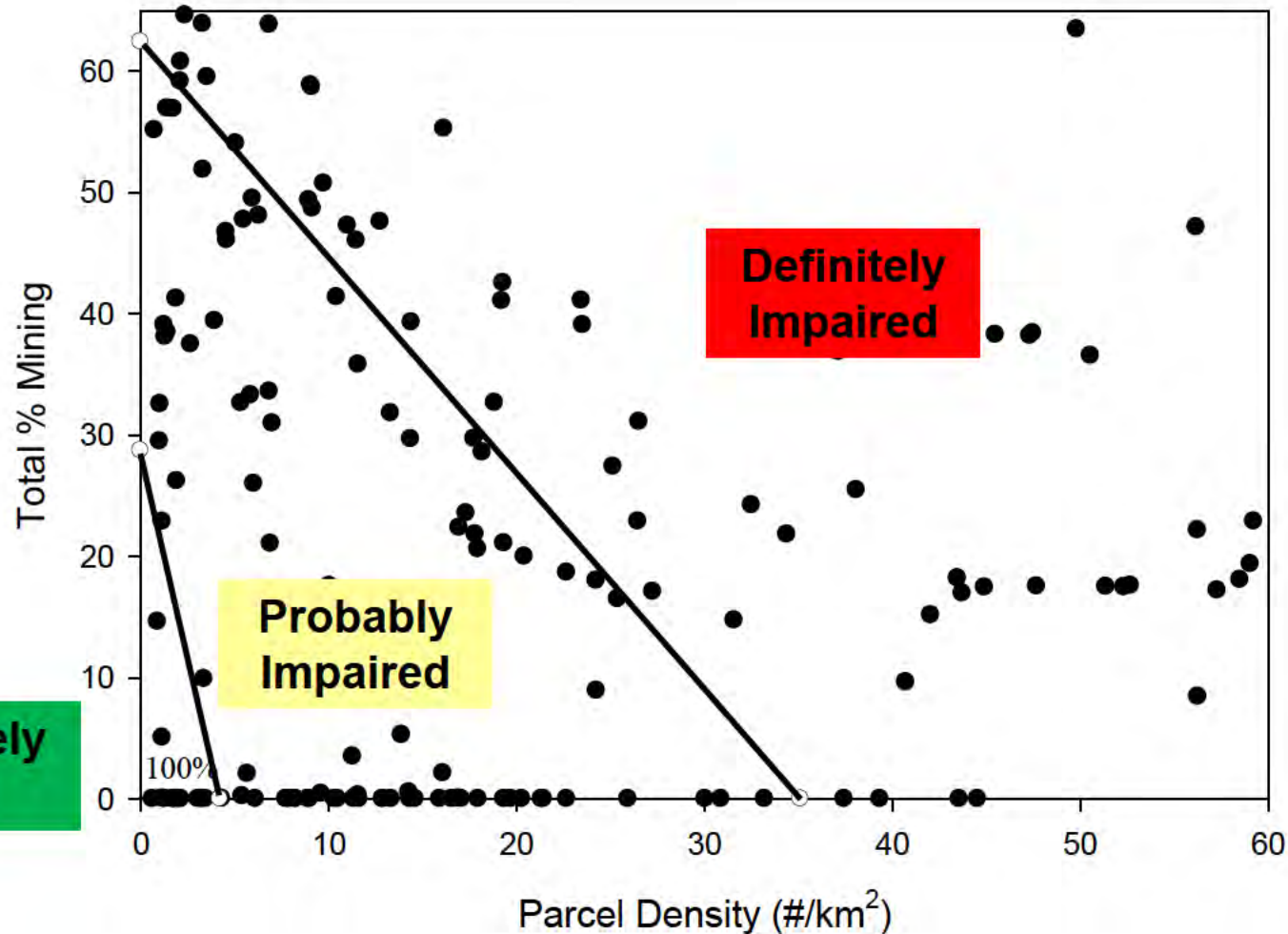


Merriam, E., J. T. Petty, Merovich, G. T, Jr., J. B. Fulton, and M. P. Strager. IN REVIEW. Additive effects of mining and residential development on stream physical , chemical, and biological conditions in a central Appalachian watershed. *Journal of the North American Benthological Society*.

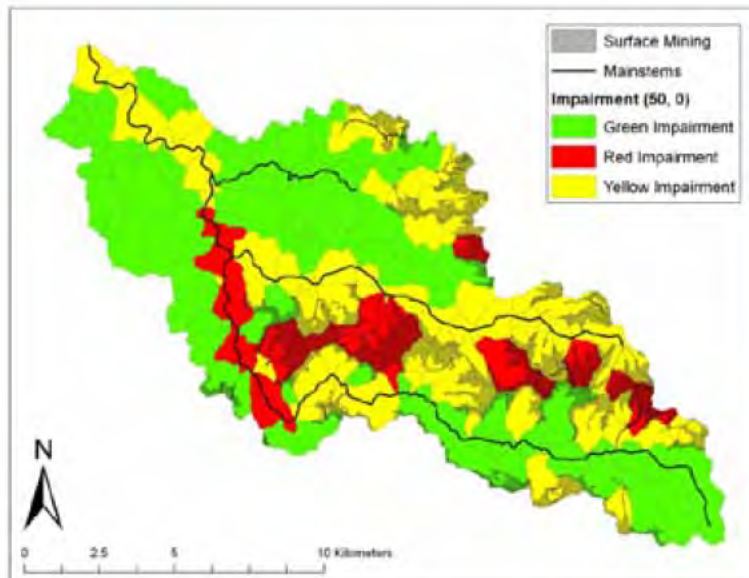
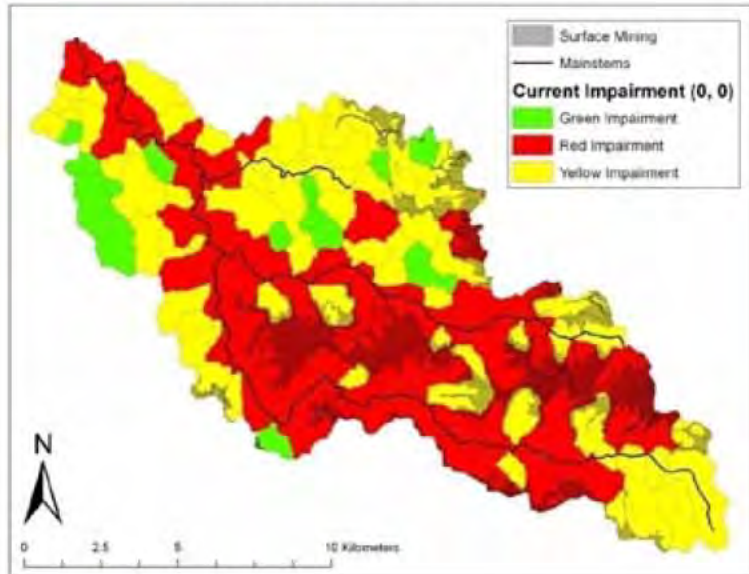


- Additive effects of mining and residential development on stream ecological condition.

Pigeon Creek Impairment Thresholds



Current Condition



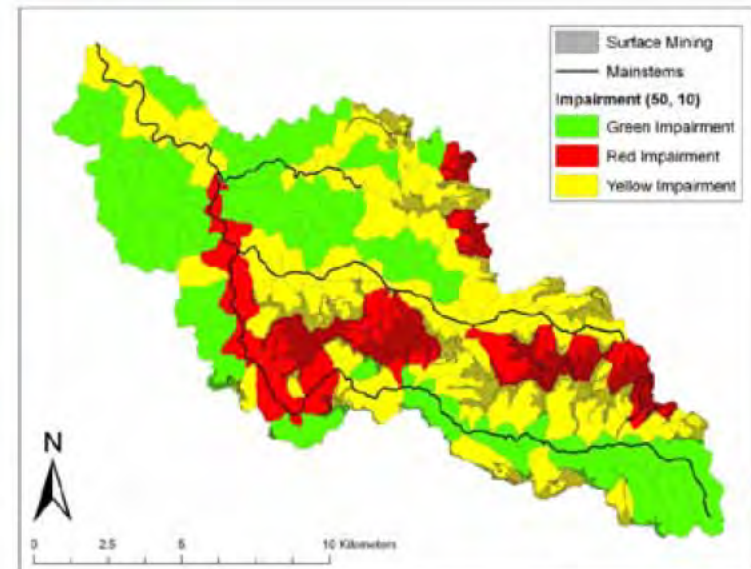
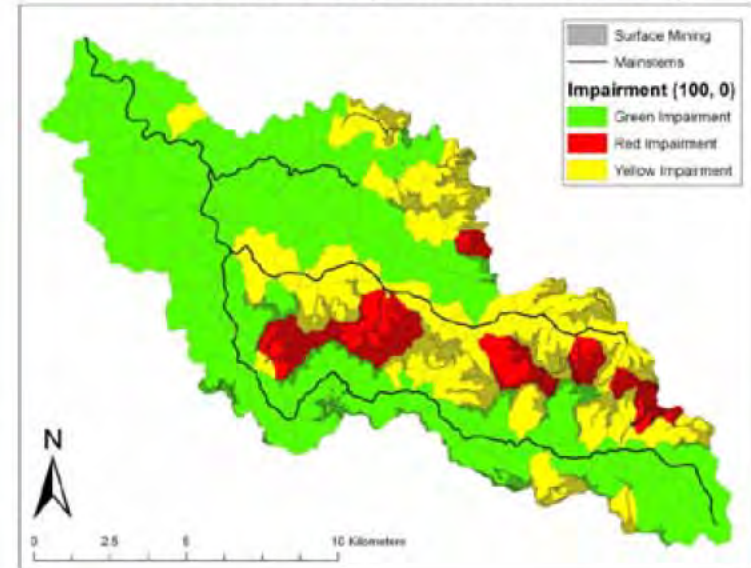
Alt Condition 1
– 50% dev / + 0% mining

Green
=
Not
Impaired

Yellow
=
Toss-Up

Red
=
Impaired

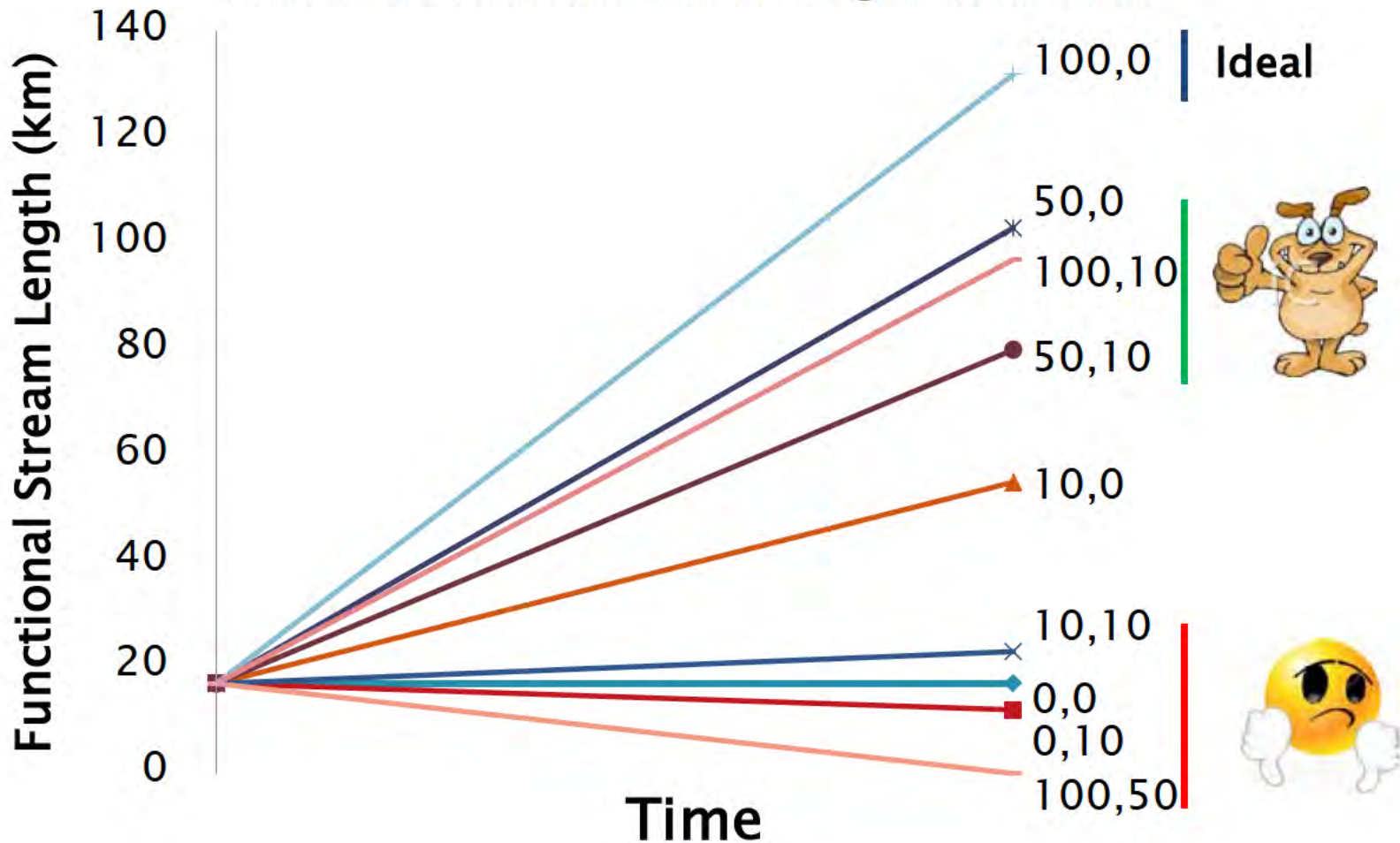
Ideal Condition – 100% dev / + 0% mining



Alt Condition 2
– 50% dev / + 10% mining

Pigeon Creek Alternative Futures

First # = % reduction in development related stress
Second # = % increase in mining related stress



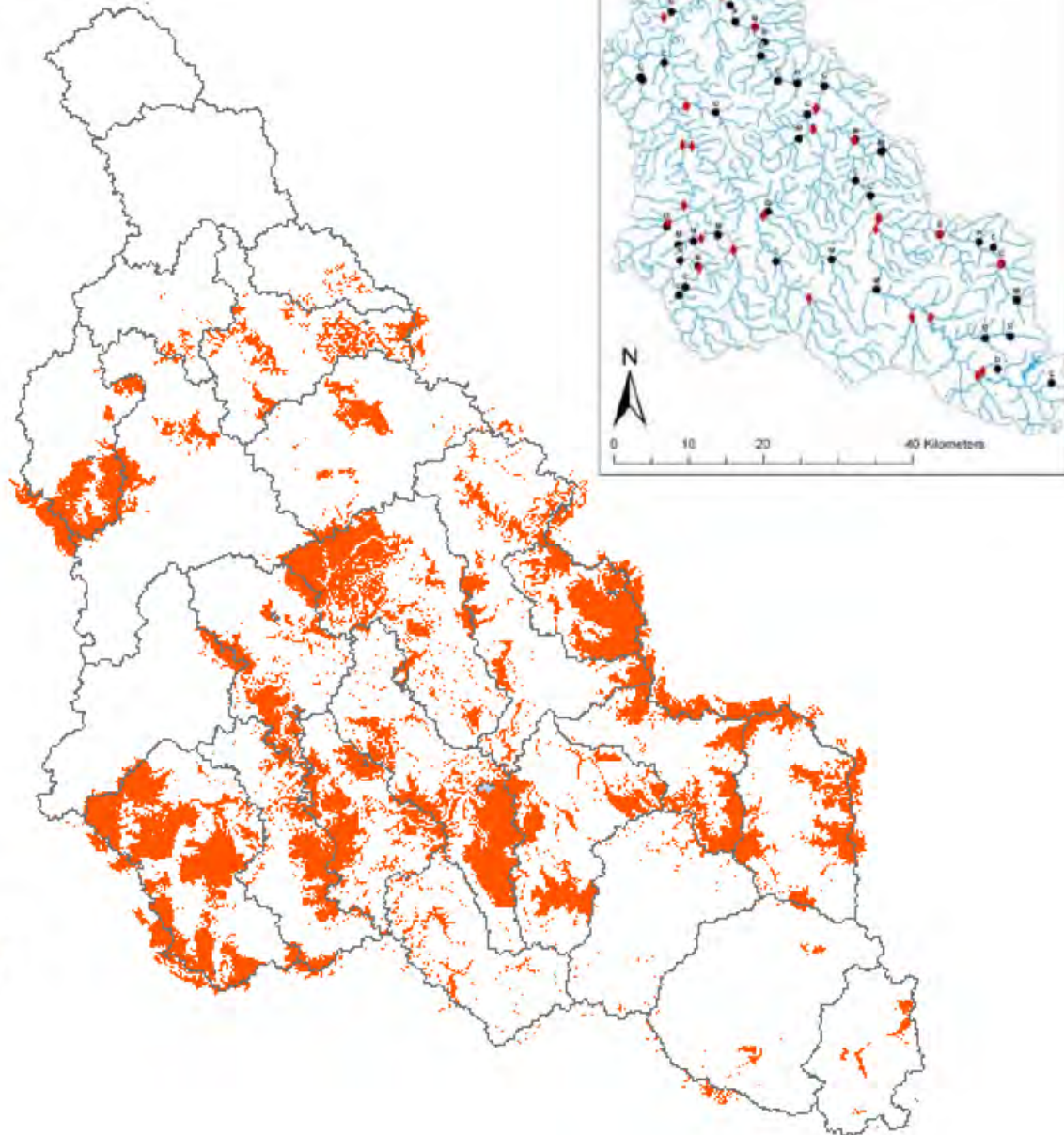
Alternative Futures Analysis in Support of Mine Permitting and Mitigation Decisions in the Mountaintop Removal Mining District of the Central Appalachians



Petty, J.T., M. P. Strager, and E. Merriam

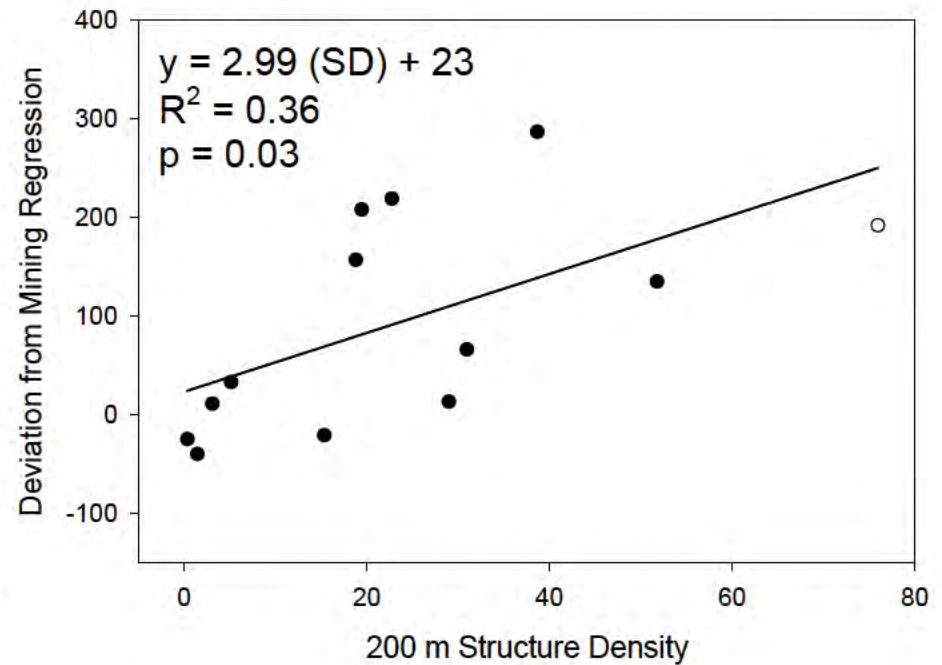
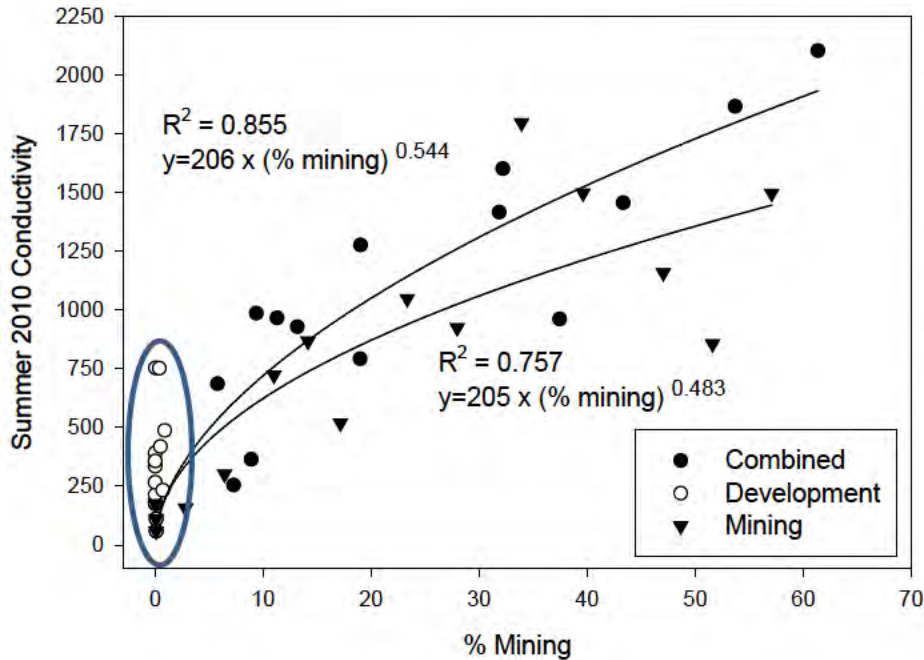
Coal River Watershed

- Total permit area
(173 mi²)
- Disturbed Area
(48 mi²)
- Reclaimed Area
(35 mi²)
- Undisturbed Area
(90 mi²)



Relationship b/n Landscape Attributes and Stream Conditions

Mining and residential development effects are additive.



Water Chemistry: Mined

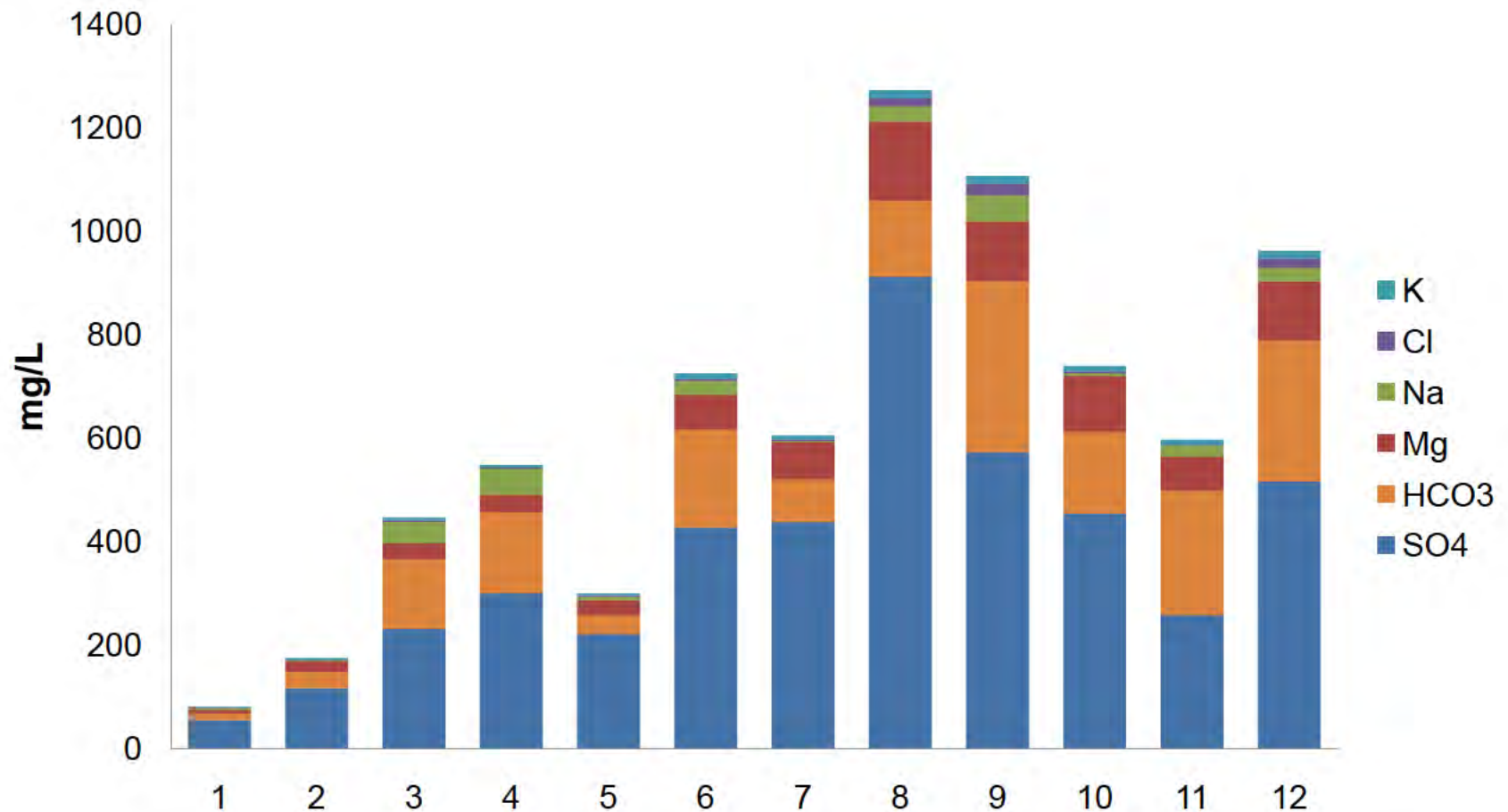


Figure 1. Column graph depicting concentrations of the 6 major contributing ions within mined sites. Sites are ordered by increasing mining intensity.

Water Chemistry: Mined

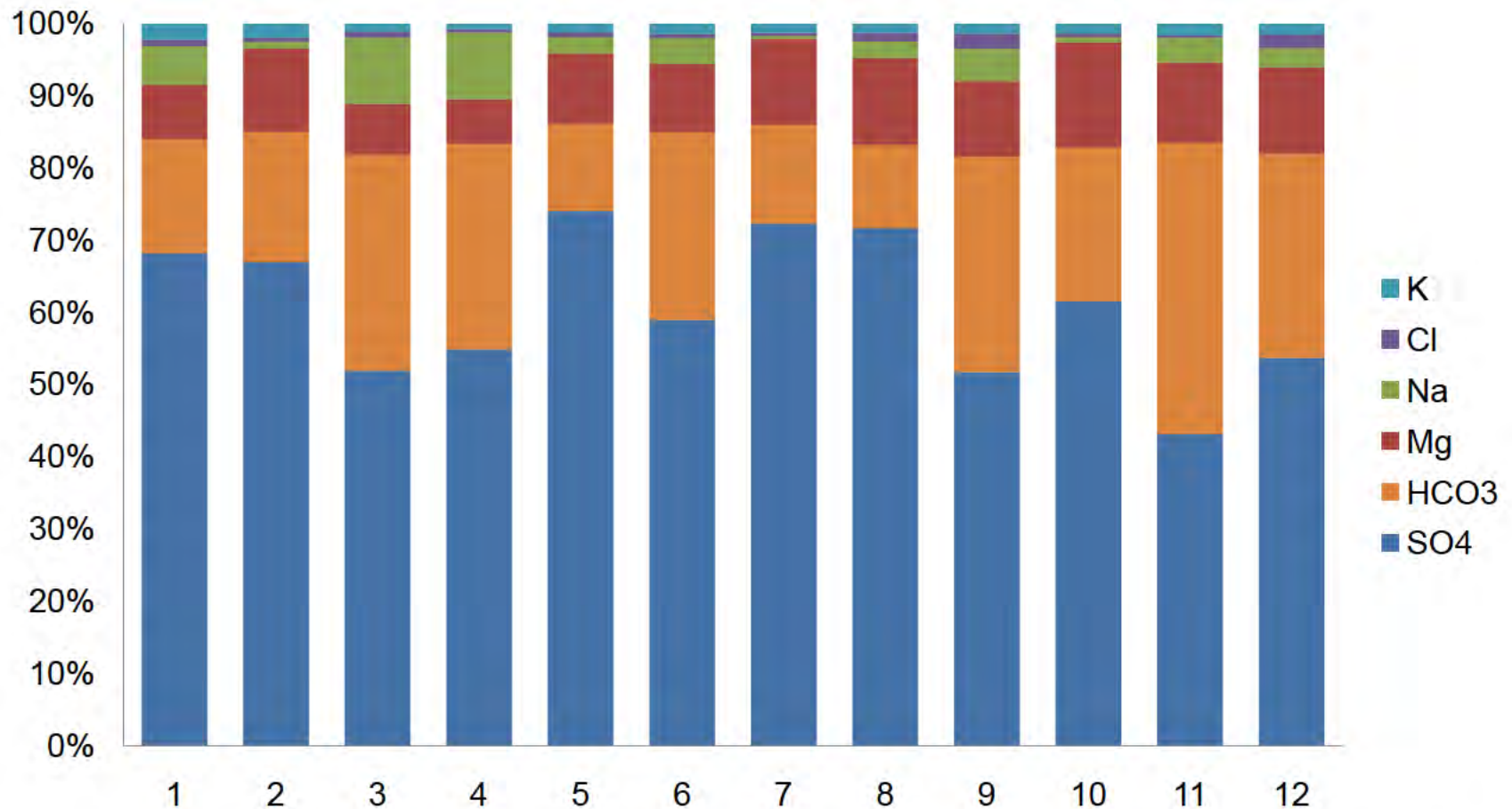


Figure 2. Column graph depicting the relative abundances of the 6 major contributing ions within mined sites. Sites are ordered by increasing mining intensity.

Water Chemistry: Developed

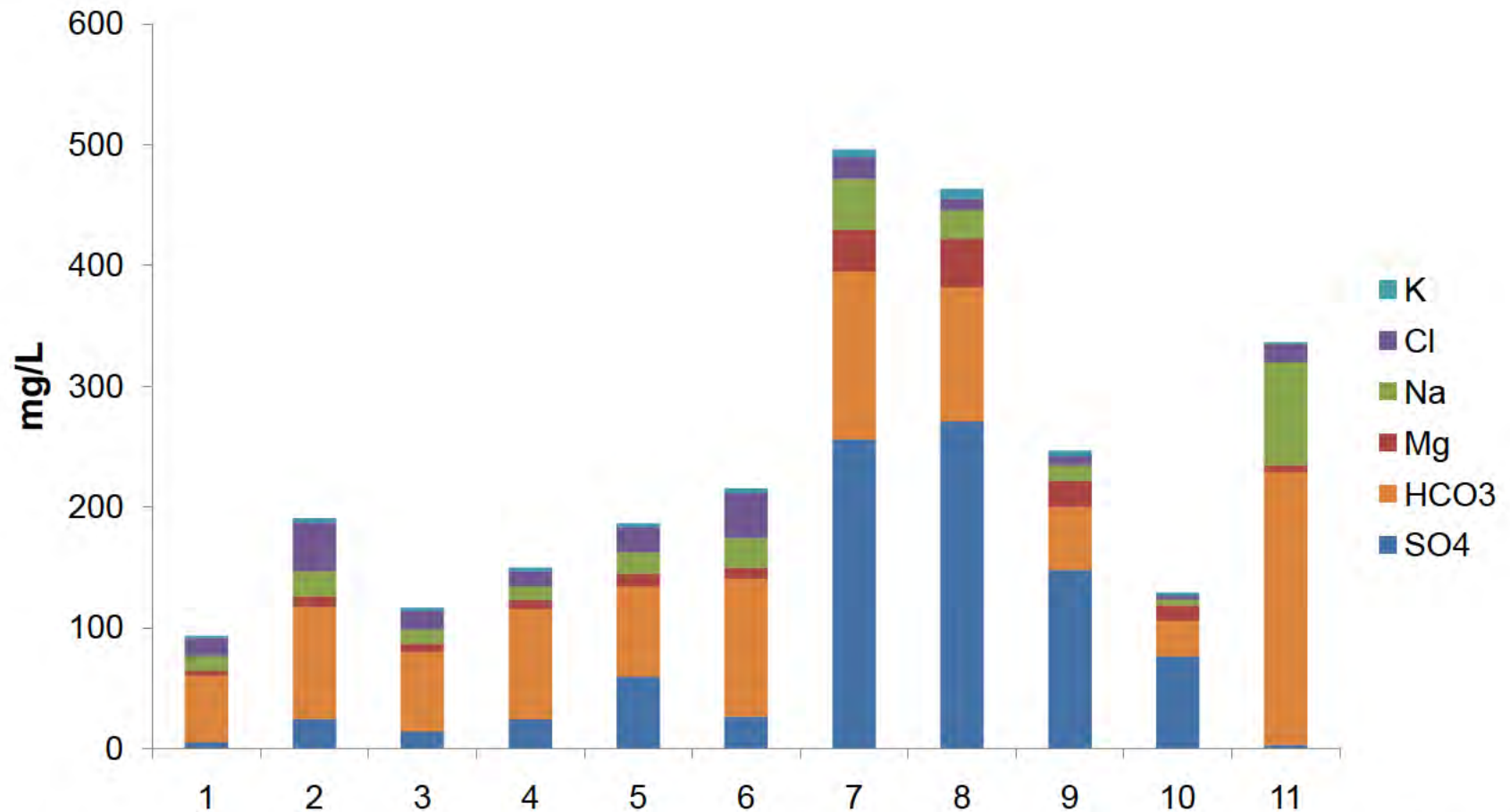


Figure 3. Column graph depicting concentrations of the 6 major contributing ions within developed sites. Sites 7, 8, 9, 10, and 11 have low amounts of mining (<1%).

Water Chemistry: Developed

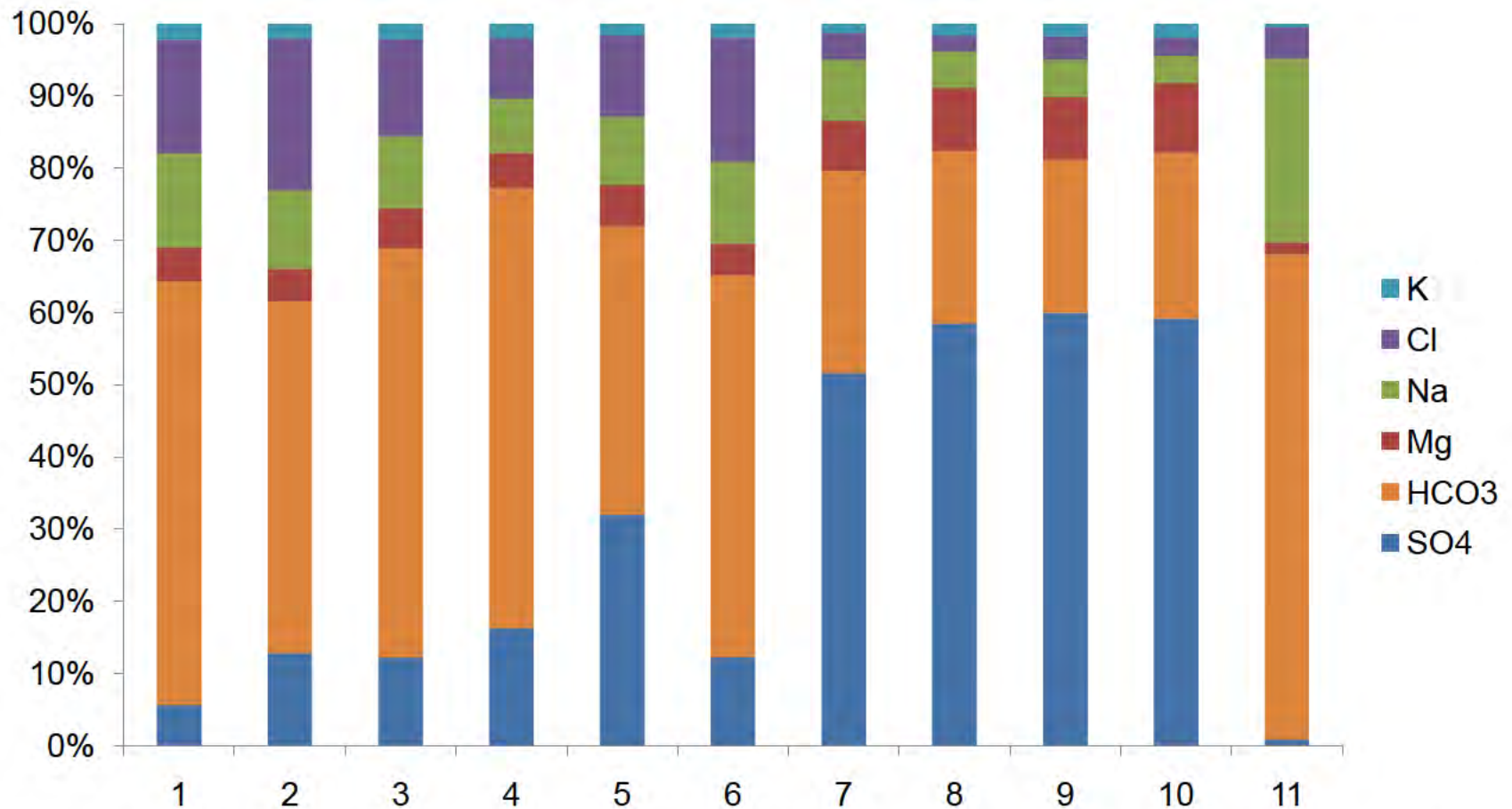


Figure 4. Column graph depicting the relative abundances of the 6 major contributing ions within developed sites. Sites 7, 8, 9, 10, and 11 have low amounts of mining (<1%).

Water Chemistry: Combined

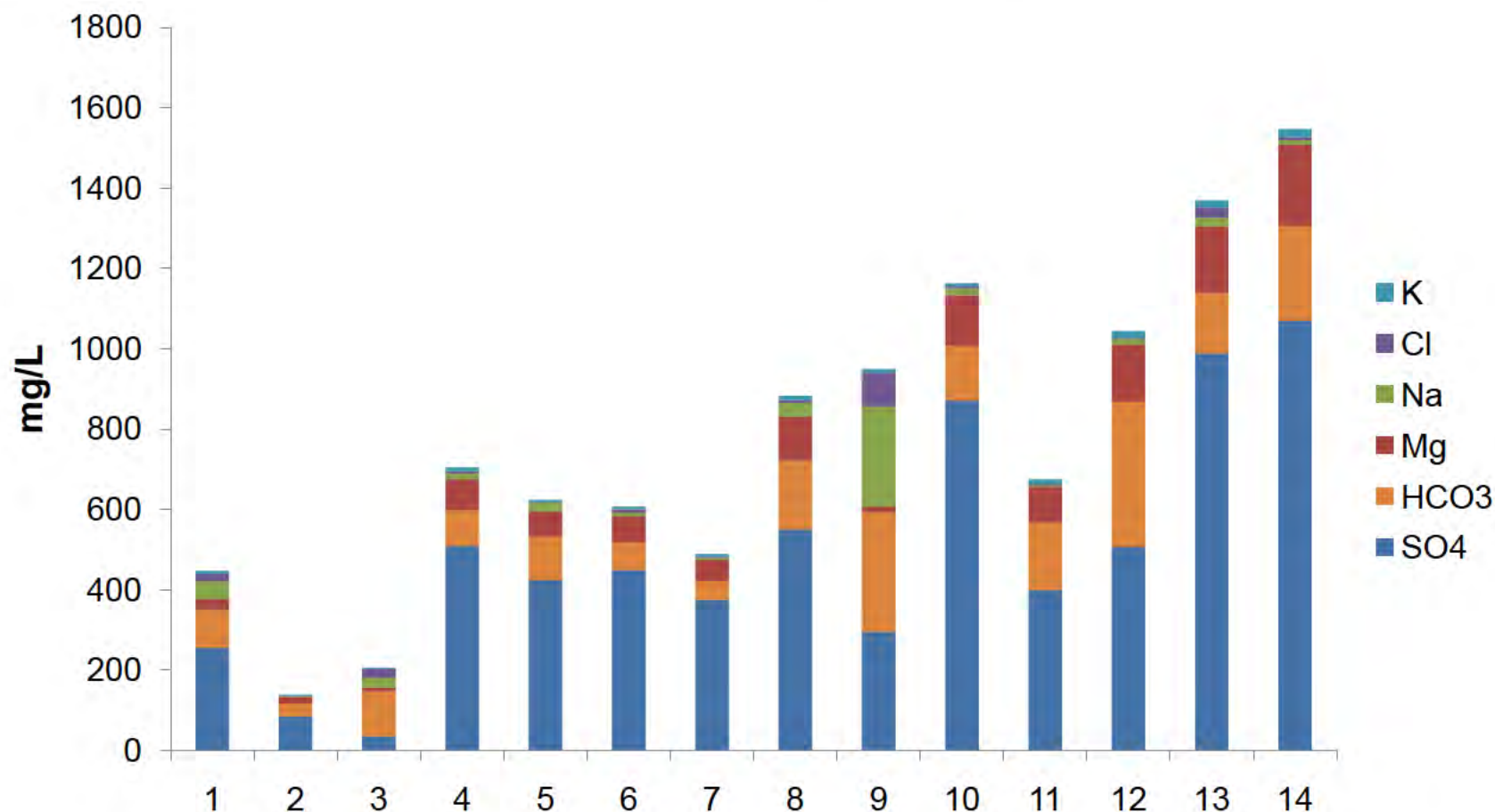


Figure 5. Column graph depicting concentrations of the 6 major contributing ions within combined sites. Sites are ordered by increasing mining intensity.

Water Chemistry: Combined

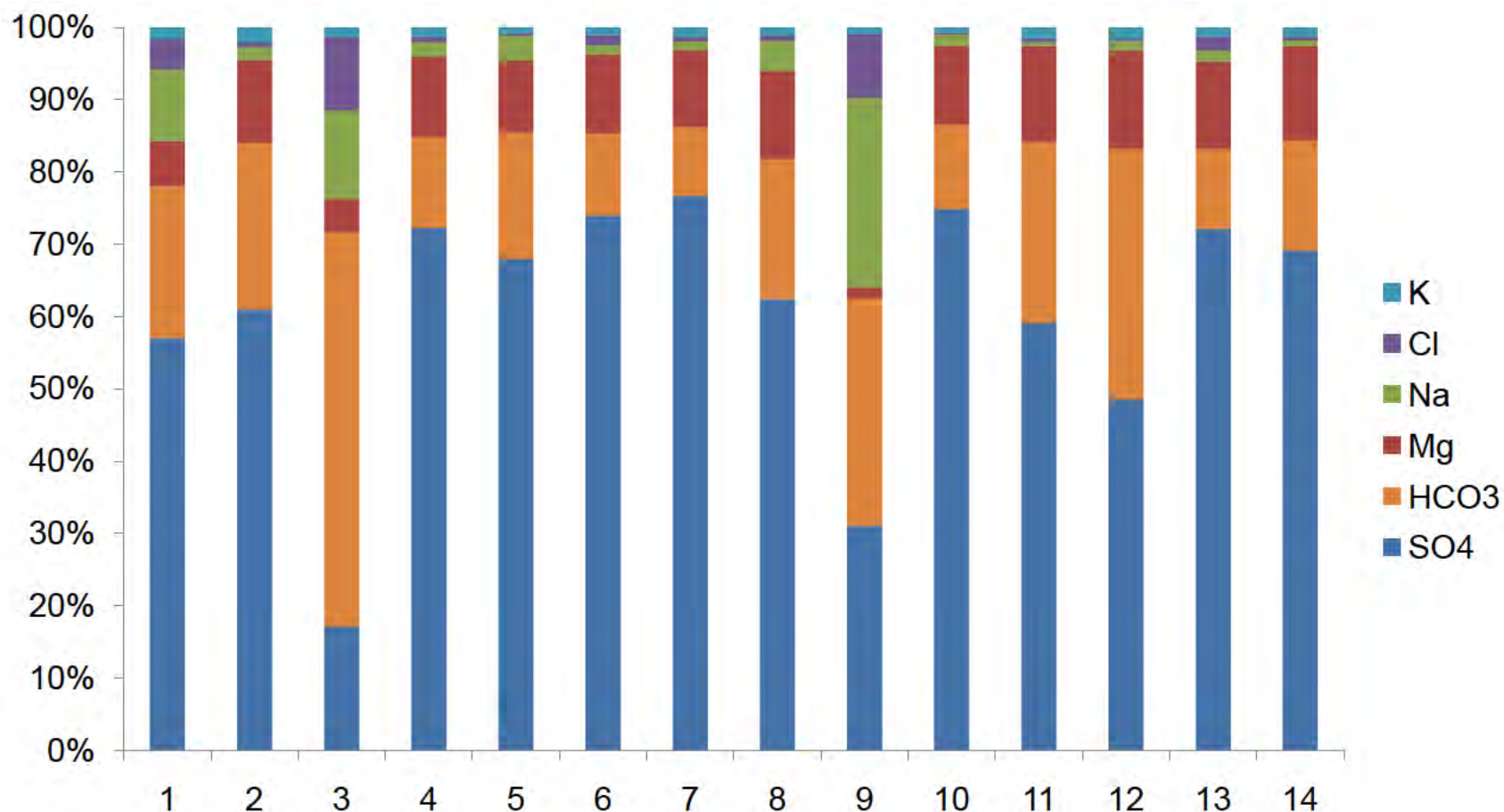
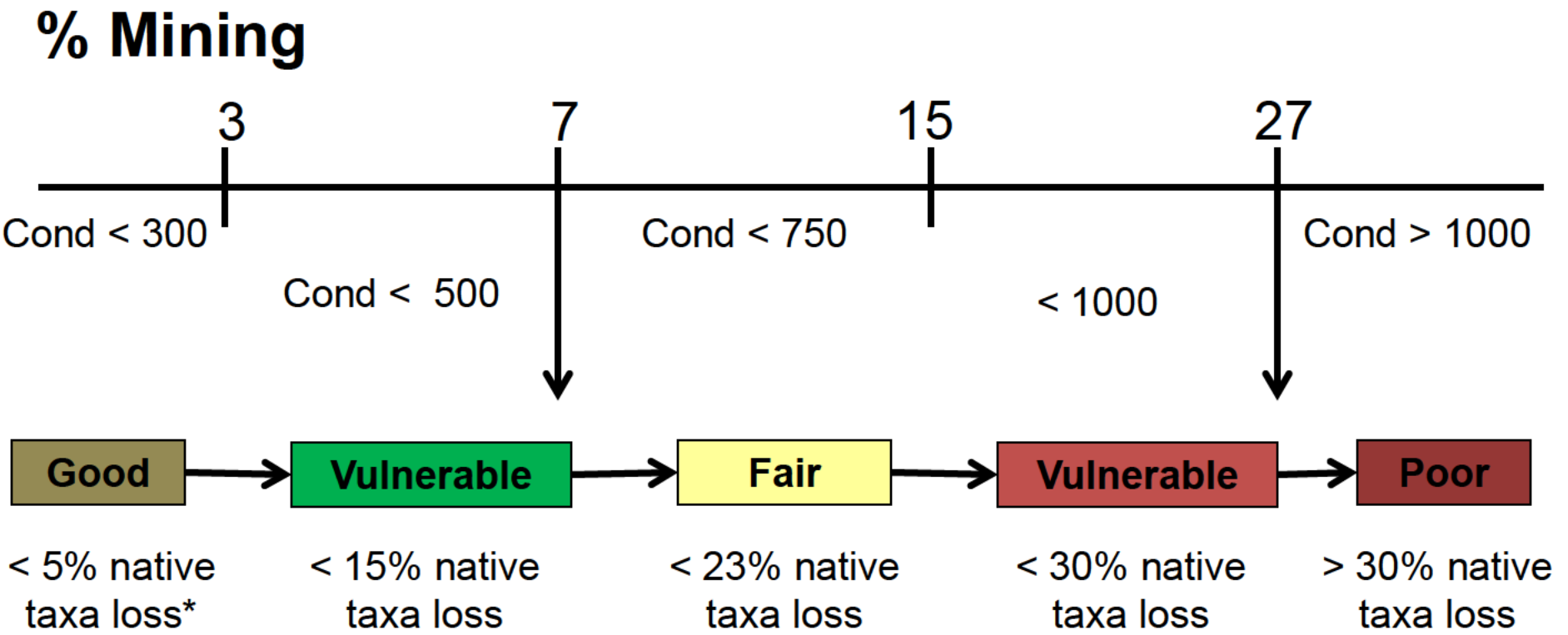


Figure 6. Column graph depicting the relative abundances of the 6 major contributing ions within combined sites. Sites are ordered by increasing mining intensity.

Coal River Watershed

% Mining Thresholds (in absence of res. effect)



*Estimates of taxonomic loss from Cormier et al. (EPA conductivity benchmark)

Coal River Watershed

Alternative Future Scenarios

SCENARIOS

Current conditions

Random permit under enhanced review

All permits under enhanced review

Total mine out of current permits

Mining Related Disturbance Inside Permit Boundaries in Litigation or ECP

Current Condition

Coal River Watershed

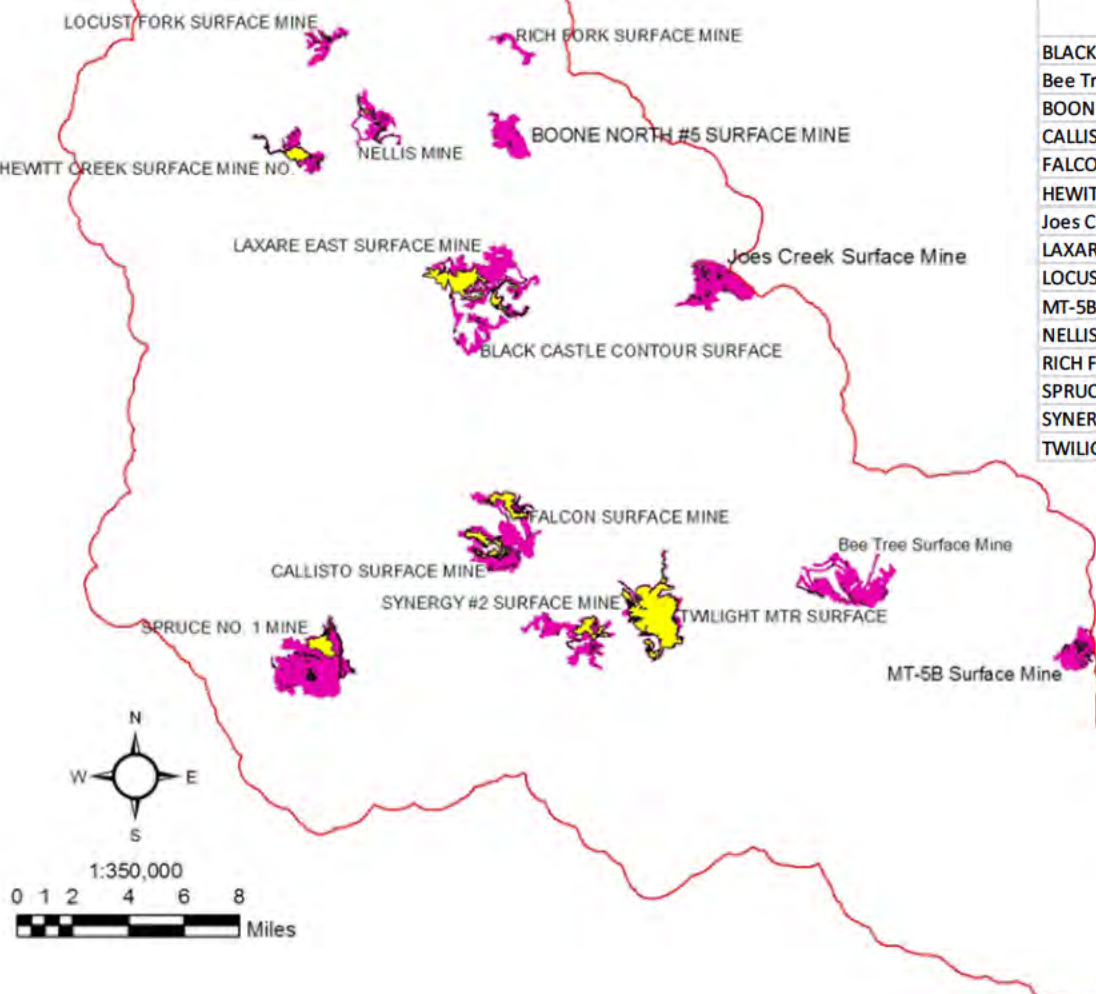
Permits Under Review

Disturbance in Permits Under Review

4,429.45 Acres of Mining Disturbance Within Permit Boundaries Under Review

Disturbance In Permits In Litigation or ECP

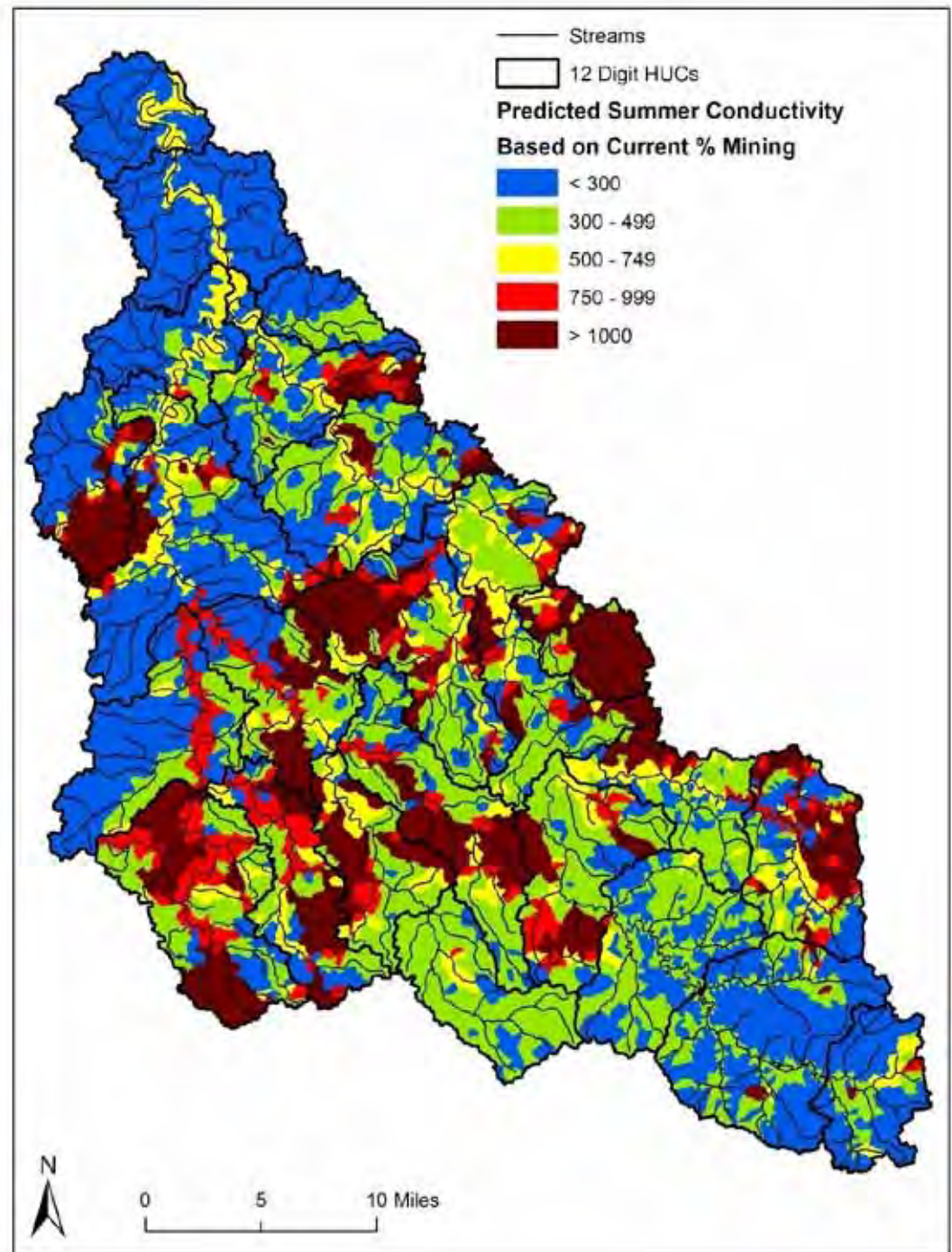
Facility Name	Current Disturbance Within Permit Under Review (Acres)	Total Area of Permit Under Review (Acres)	% of Permit Under Review Disturbed
BLACK CASTLE CONTOUR SURFACE	240.57	904.55	26.60%
Bee Tree Surface Mine	27.57	1123.87	2.45%
BOONE NORTH #5 SURFACE MINE	2.02	729.32	0.28%
CALLISTO SURFACE MINE	303.09	1209.52	25.06%
FALCON SURFACE MINE	298.79	653.22	45.74%
HEWITT CREEK SURFACE MINE NO.	230.07	560.22	41.07%
Joes Creek Surface Mine	23.47	1454.31	1.61%
LAXARE EAST SURFACE MINE	633.53	1409.57	44.94%
LOCUST FORK SURFACE MINE	13.48	253.63	5.31%
MT-5B Surface Mine	30.72	689.72	4.45%
NELLIS MINE	46.91	472.05	9.94%
RICH FORK SURFACE MINE	1.56	158.30	0.99%
SPRUCE NO. 1 MINE	397.81	2855.28	13.93%
SYNERGY #2 SURFACE MINE	256.26	940.22	27.26%
TWILIGHT MTR SURFACE	1923.60	2141.29	89.83%



Coal River Watershed

Summer Conductivity

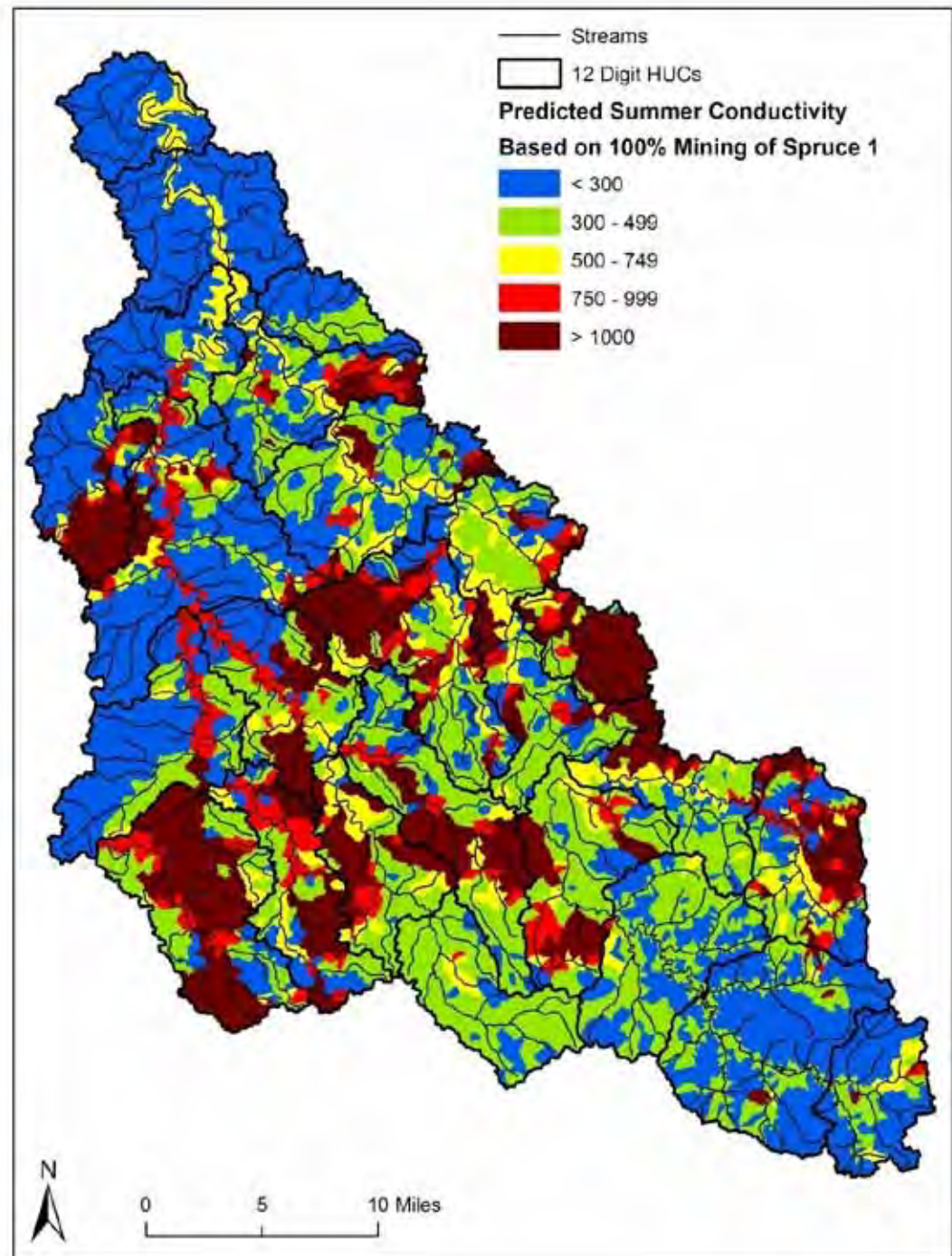
Current Condition



Coal River Watershed

Summer Conductivity

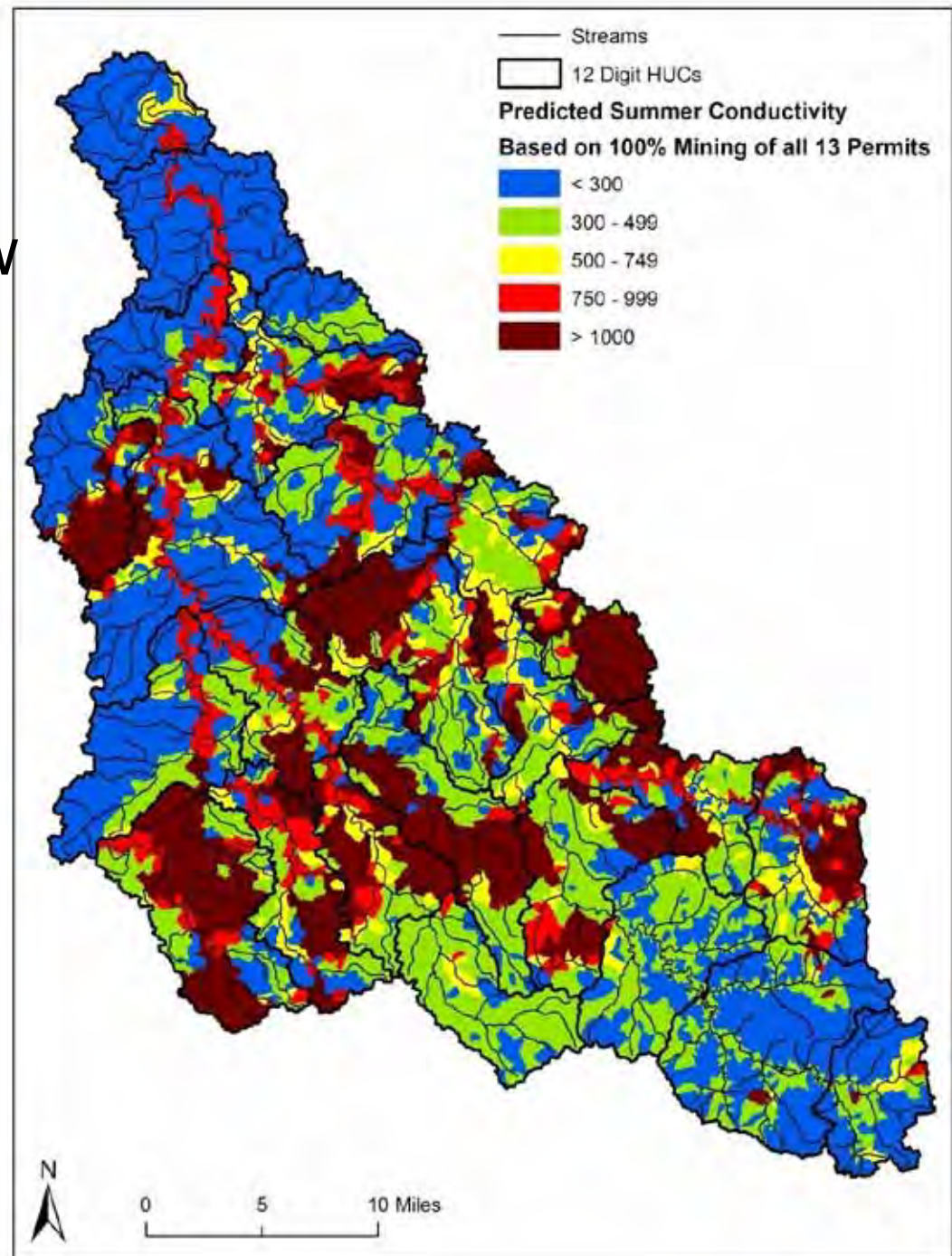
Random permit



Coal River Watershed

Summer Conductivity

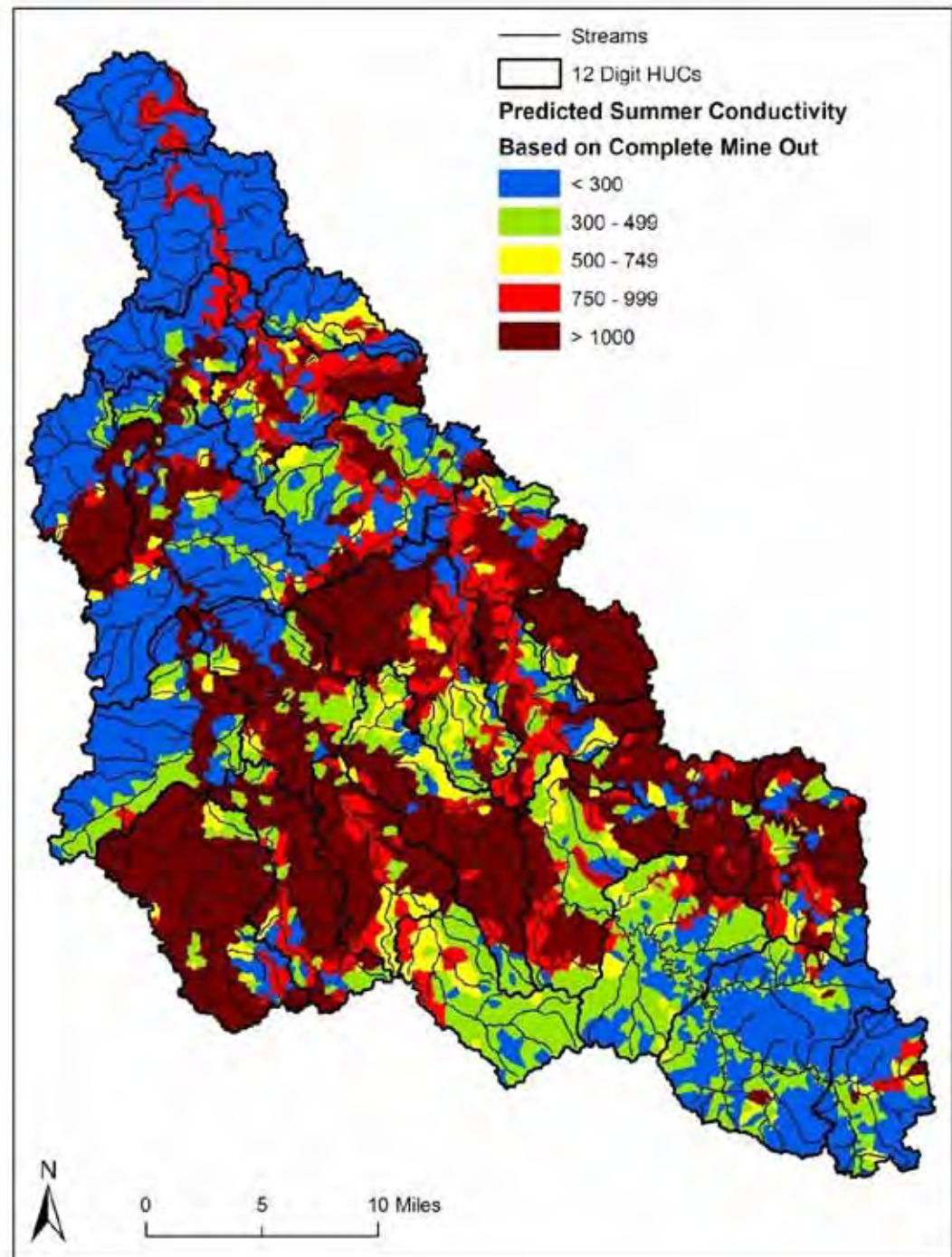
All permits under review



Coal River Watershed

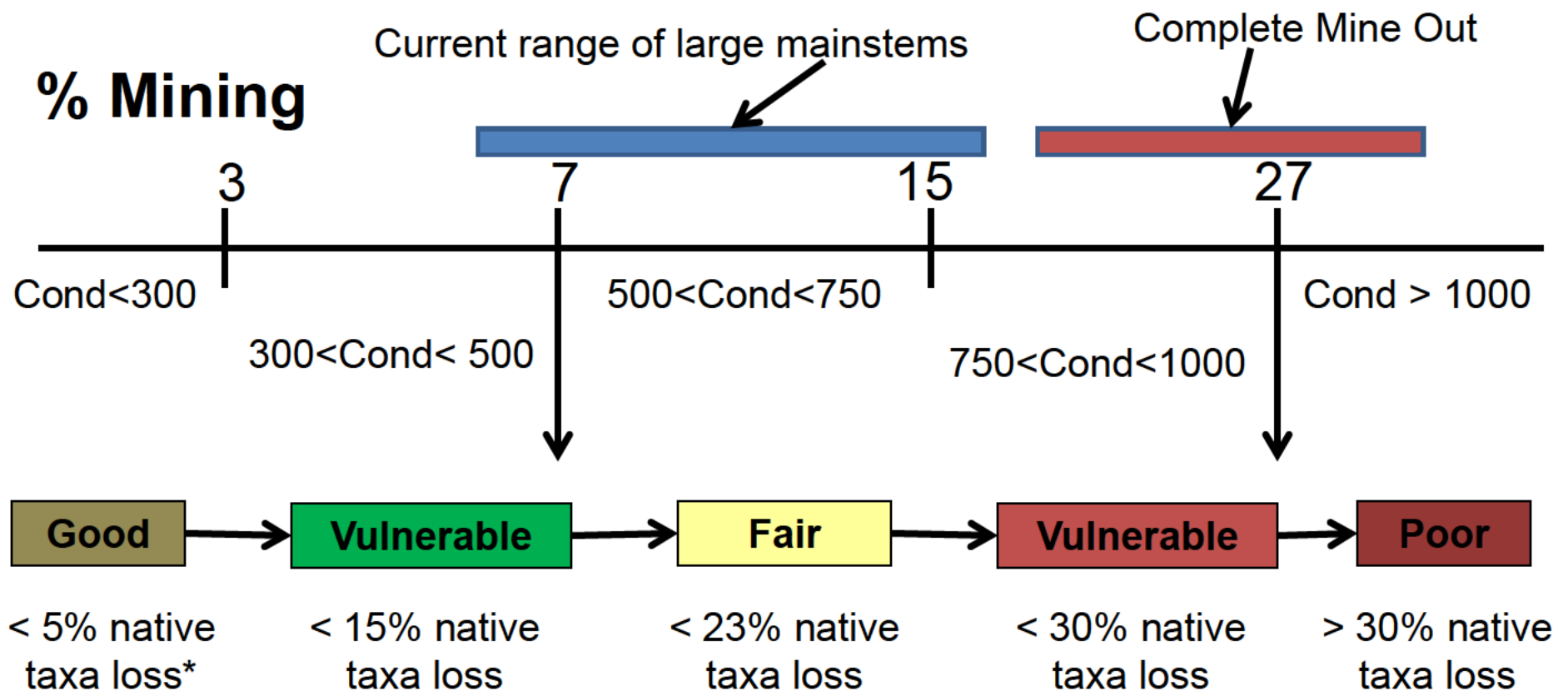
Summer Conductivity

Complete Mine Out



Coal River Watershed

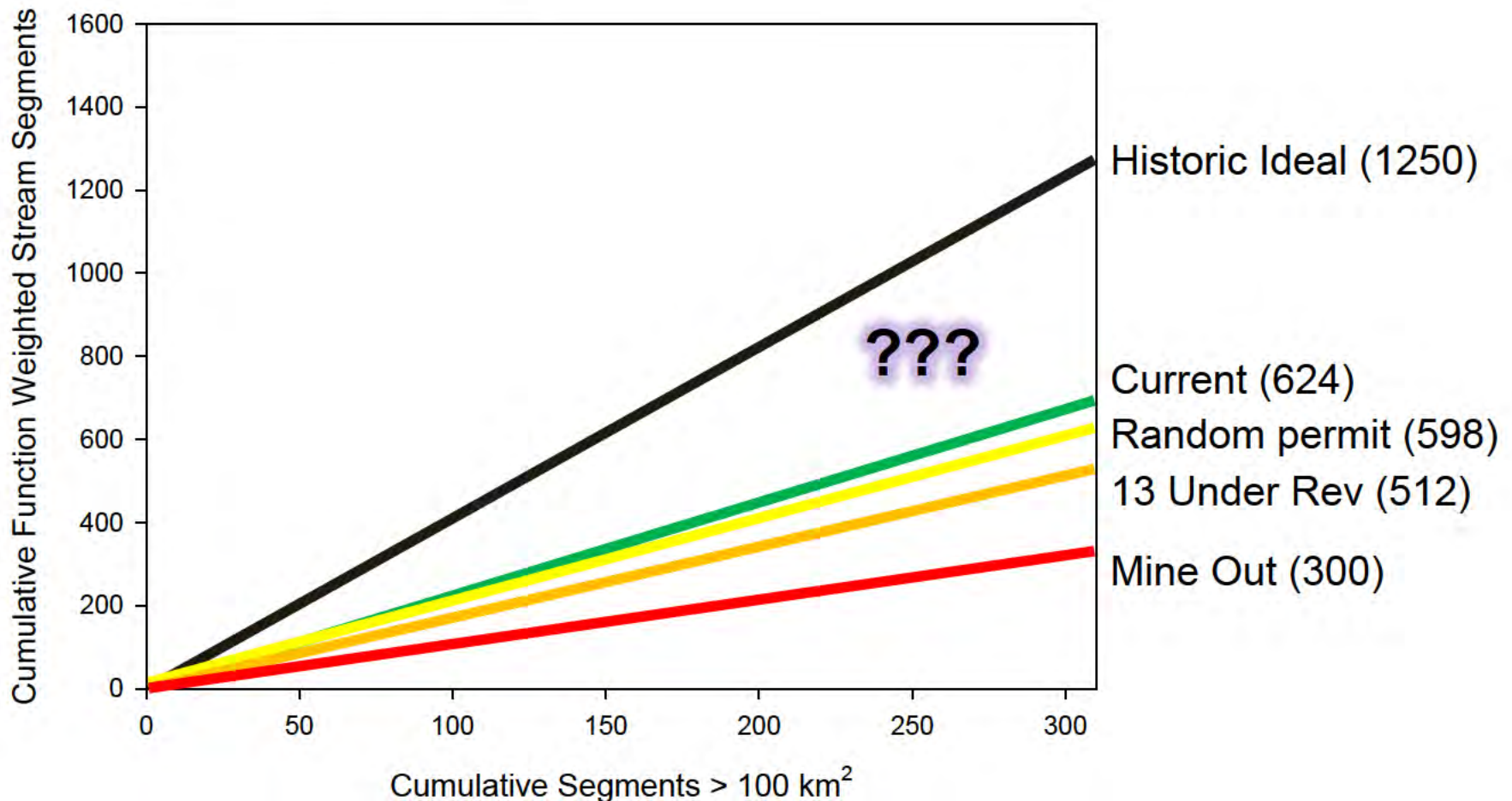
% Mining Thresholds (in absence of res. effect)

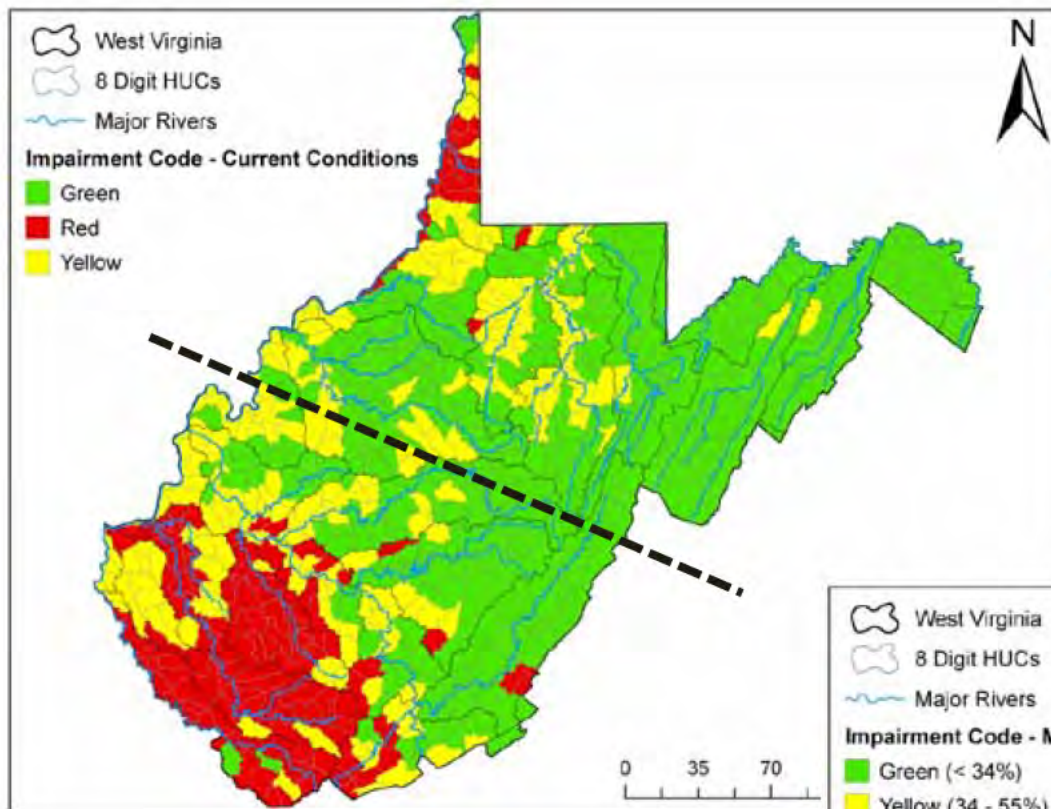


*Estimates of taxonomic loss from Cormier et al. (EPA conductivity benchmark)

Coal River Watershed

Cumulative Number of Functionally Weighted Stream Segments > 100 km² drainage area under different mining scenarios

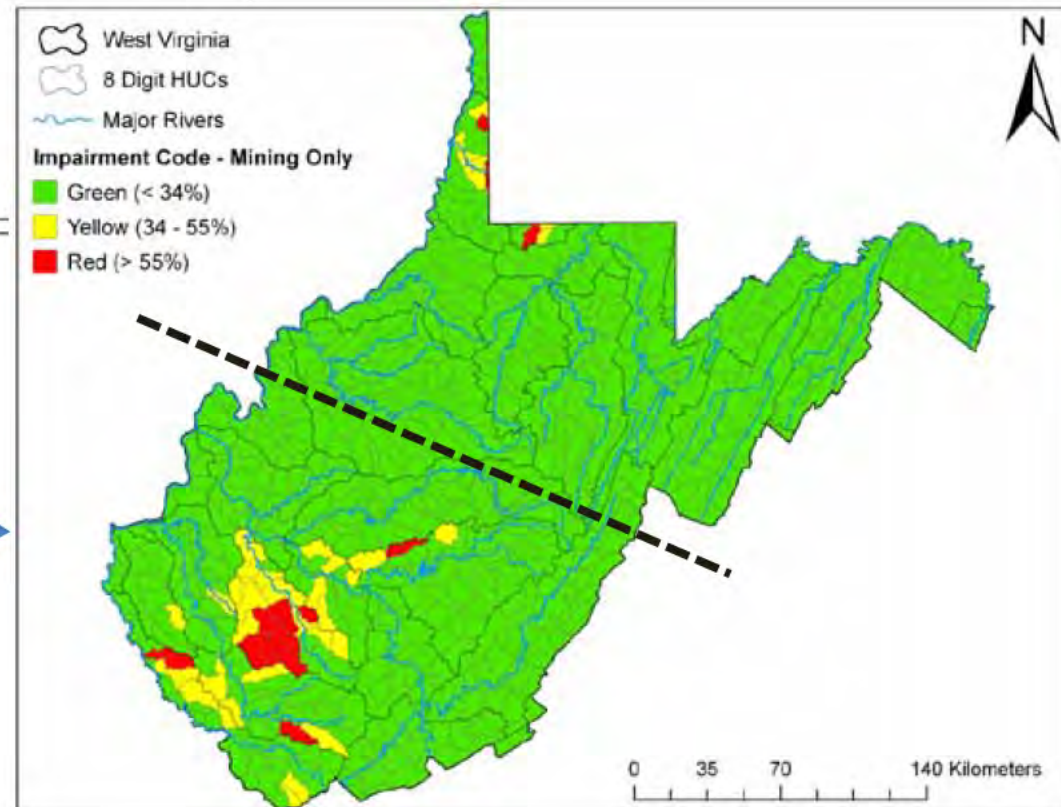




Expected river conditions (HUC12) given permitted mine area and current development (Pigeon Creek model)



Potential river conditions (HUC12) given permitted mining + full WWT



Christopher
Hunter/DC/USEPA/US

11/09/2010 04:56 PM

To MichaelG Lee, Gregory Peck, Matthew Klasen

cc

bcc

Subject REMINDER: Draft 3(a) letter from Doe Branch Surface Mine

The Region will need comments back on this draft 3a by Wednesday COB. Thanks

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/09/2010 04:55 PM -----

From: Brian Frazer/DC/USEPA/US
To: Kevin Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Cliff
Rader/DC/USEPA/US@EPA
Cc: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/05/2010 07:10 AM
Subject: Draft 3(a) letter from Doe Branch Surface Mine

Kevin, Mike and Cliff,

Wetlands Division received from Region 3 a draft 3a letter for the non-ECP Doe Branch Mine in VA letter. We have reviewed the letter and our comments are incorporated in the draft below.

The Basic information on the mine is as follows:

- 5 valley fills
- 16,000 lf of stream impacts
- 2 acres of wetland impacts
- approximately 60% remining
- Conductivity on-site is generally below 500, downstream is generally above 500.

Please review and let me and Chris Hunter know if you have any comments. The Region needs HQ comments back by **Wednesday November 10**.

Thanks,

bf



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch EPA Comment Draft 11-4-10 - ch.doc

Brian Frazer/DC/USEPA/US

11/10/2010 07:49 AM

To Matthew Klasen

cc

bcc

Subject Fw: Draft 3(a) letter from Doe Branch Surface Mine

Hey Matt - Friendly reminder, let me know if you and/or Greg have any comments on the Doe Branch 3(a) letter.

Thanks

bf

Brian M. Frazer, Chief
Wetlands & Aquatic Resources Regulatory Branch
Office of Wetlands, Oceans and Watersheds
U.S. EPA
1200 Pennsylvania Avenue, NW (MC 4502T)
Washington, DC 20460
202-566-1652

----- Forwarded by Brian Frazer/DC/USEPA/US on 11/10/2010 07:43 AM -----

From: Brian Frazer/DC/USEPA/US
To: Gregory Peck/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA
Date: 11/08/2010 02:46 PM
Subject: Fw: Draft 3(a) letter from Doe Branch Surface Mine

Greg and Matt - Attached below is the Doe branch 3(a) letter. please review and send your comments by cob Wednesday.

Thanks,

bf

Brian M. Frazer, Chief
Wetlands & Aquatic Resources Regulatory Branch
Office of Wetlands, Oceans and Watersheds
U.S. EPA
1200 Pennsylvania Avenue, NW (MC 4502T)
Washington, DC 20460
202-566-1652

----- Forwarded by Brian Frazer/DC/USEPA/US on 11/08/2010 02:44 PM -----

From: Brian Frazer/DC/USEPA/US
To: Kevin Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA
Cc: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/05/2010 07:10 AM
Subject: Draft 3(a) letter from Doe Branch Surface Mine

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Please review and let me and Chris Hunter know if you have any comments. The Region needs HQ comments back by **Wednesday November 10.**

Thanks,

bf



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch EPA Comment Draft 11-4-10 - ch.doc

**Matthew
Klasen/DC/USEPA/US**
11/10/2010 09:35 AM

To: Cliff Rader
cc
bcc
Subject: Cumulative impacts presentations from yesterday (1 of 3)

I'll send in three messages (the two WVU presentations and the Corps's presentation). I have original PPT versions of these but they're huge to email, so I turned them into PDFs.

mk

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780

cell (202) 380-7229  - EPA_DCmtg_petty_8Nov2010 with new study area slide2.pdf

ATTACHMENT REDACTED - DELIBERATIVE

**Ross
Geredien/DC/USEPA/US**

11/10/2010 10:41 AM

To Christopher Hunter, Brian Topping, Timothy Landers, Brian
Frazer

cc

bcc

Subject Fw: REMINDER: OWOW Action Matrix Updates by COB
today

OK, since I missed the mining call, I'm a bit out of the loop this week. I can update on Cum effects, probably mention the upcoming deadline on Stacy Branch, which I think was already updated last week. No changes to the matrix that I'm aware of, I assume the COE has not proferred a permit on Premier.



ATTACHMENTS REDACTED - DELIBERATIVE

Mining_ECP_Permit Tracking_11-10-10.xls AA hot topics-MTM_11-10-10.docx

Ross Geredien
ORISE Fellow
EPA Office of Wetlands, Oceans, and Watersheds
202-566-1466
Geredien.ross(AT)epa.gov

----- Forwarded by Ross Geredien/DC/USEPA/US on 11/10/2010 10:28 AM -----

From: Tanya Code/DC/USEPA/US
To: OWOW Managers Group
Cc: Betsy Valente/DC/USEPA/US@EPA, Brian Rappoli/DC/USEPA/US@EPA, Chris Laabs/DC/USEPA/US@EPA, Chris Lewicki/DC/USEPA/US@EPA, Christine Ruf/DC/USEPA/US@EPA, Clay Miller/DC/USEPA/US@EPA, Donna Downing/DC/USEPA/US@EPA, Hazel Groman/DC/USEPA/US@EPA, Kathryn Benz/DC/USEPA/US@EPA, Ruth Chemerys/DC/USEPA/US@EPA, Sonia Kassambara/DC/USEPA/US@EPA, Stacie Craddock/DC/USEPA/US@EPA, Yasmin Yorker/DC/USEPA/US@EPA, Rosaura Conde/DC/USEPA/US@EPA, menchu-c martinez/DC/USEPA/US@EPA, Erin Flannery/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA, Brian Topping/DC/USEPA/US@EPA, Kate Perry/DC/USEPA/US@EPA, Robert Gunter/DC/USEPA/US@EPA, Tomeka Nelson/DC/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA
Date: 11/10/2010 07:44 AM
Subject: REMINDER: OWOW Action Matrix Updates by COB today



Please send me updates to the OWOW Action Matrix by COB today. (Updates are due to OW on Friday in lieu of Veteran's Day.)



ATTACHMENT REDACTED - DELIBERATIVE

OWOW Action Matrix 11-1-10.doc

Thanks,

Tanya Code
Special Assistant
Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency
Tel: 202.566.1063
Fax: 202.566.1147

Joy Gillespie/R3/USEPA/US

11/10/2010 11:57 AM

To Alaina McCurdy, Carrie Traver, Gregory Gies, Jessica
Martinsen, Mark Douglas, Michael Mansolino

cc Jeffrey Lapp, John Forren

bcc

Subject draft 404 Q&A discussion

1 attachment



ATTACHMENT REDACTED - DELIBERATIVE

404 QsandAs 080410.doc

Meeting

Date 01/18/2011

Time 01:30:00 PM to 02:30:00 PM

Chair Joy Gillespie

Invitees

Required Alaina McCurdy; Carrie Traver; Gregory Gies; Jessica Martinsen; Mark
Douglas; Michael Mansolino

Optional Jeffrey Lapp; John Forren

FYI

Location 12th floor, Rm 205

Hi all,

Please review the attached 404 Q&A document by the time of this meeting and be prepared to provide comments. FBT and myself want to make certain that the answers provided within are clear and that all your 404 scientific and technical questions are being addressed.

Thanks for your help.

Joy

Matthew
Klasen/DC/USEPA/US
11/10/2010 12:17 PM

To Timothy Landers
cc Justin Wright
bcc
Subject Re: Still working on edits to surface water DEIS section

Sounds good.

Justin: Perhaps you send along the attached comments (I just accepted all the Track Changes) along with a quick cover note that might say the following:

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Let me know if this looks OK.

Thanks,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

EIS Comment form Chap 3.6 - EPA.docx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Timothy Landers Matt, I agree. Like the sections of chapter 3 befo... 11/10/2010 11:11:45 AM

From: Timothy Landers/DC/USEPA/US
To: Matthew Klasen/DC/USEPA/US@EPA, Justin Wright/DC/USEPA/US@EPA
Date: 11/10/2010 11:11 AM
Subject: Re: Still working on edits to surface water DEIS section

Matt, (b) (5)

[REDACTED]

Matthew Klasen Tim and Justin, 11/10/2010 10:59:43 AM

From: Matthew Klasen/DC/USEPA/US
To: Timothy Landers/DC/USEPA/US@EPA
Cc: Justin Wright/DC/USEPA/US@EPA
Date: 11/10/2010 10:59 AM
Subject: Re: Still working on edits to surface water DEIS section

Tim and Justin,

OK, so attached are my comments on this, and I used Track Changes for now so you can see which comments are new from me. Like with previous sections, I devoted the majority of my energies toward the Appalachia section; in this case, that section is certainly longer than the rest.

(b) (5)




Thanks,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

-----Timothy Landers/DC/USEPA/US wrote: -----

To: Matthew Klasen/DC/USEPA/US@EPA, Justin Wright/DC/USEPA/US@EPA
From: Timothy Landers/DC/USEPA/US
Date: 11/10/2010 10:14AM
Subject: Re: Still working on edits to surface water DEIS section

I've received no other comments. We gave folks until COB yesterday, so I suspect that's all we're going to get.

From: Matthew Klasen
Sent: 11/10/2010 08:41 AM EST
To: Timothy Landers; Justin Wright
Subject: Still working on edits to surface water DEIS section

Hey Tim and Justin,

I'm still working on the surface water section of the DEIS and hope to get my comments together in a couple hours or so. I'll plan to send you both the compiled comment doc so we can all be on the same page, and then we can figure out one of us to send this to OSM.

I haven't seen any comments beyond R5's and Tim's -- have you guys seen any others come in? (If so, I'm happy to compile together with my comments.)

Thanks,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

[a trademark "E" is contained from Chap 3.8, "E" and "and" deleted by Timothy Lander CCC US EPAUS]

Timothy
Landers/DC/USEPA/US
11/10/2010 12:38 PM

To: Jim Pendergast, Brian Frazer
cc: Christopher Hunter, Ross Geredien
bcc:
Subject: Fw: EPA comments on updated stream protection rule text

Jim:

Per your request at this morning's briefing on the OSM stream protection rule/EIS, attached below are EPA's most recent comments/edits on the proposed rule text. I've placed this Word document (along with my other electronic files on this issue) on the Share Drive at [G:\Wetlands Division\WARRB\Personal Files\Tim Landers Files\Stream Protection Rule](#) in case anyone needs to access these.

----- Forwarded by Timothy Landers/DC/USEPA/US on 11/10/2010 12:21 PM -----

From: Matthew Klasen/DC/USEPA/US
To: Timothy Landers/DC/USEPA/US@EPA
Date: 11/02/2010 12:04 PM
Subject: Fw: EPA comments on updated stream protection rule text

FYI

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

----- Forwarded by Matthew Klasen/DC/USEPA/US on 11/02/2010 12:04 PM -----

From: Gregory Peck/DC/USEPA/US
To: srideout@osmre.gov
Cc: drice@osmre.gov, Nancy Stoner/DC/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA, Kevin Minoli
Date: 11/02/2010 12:03 PM
Subject: EPA comments on updated stream protection rule text

Sterling,

(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

(b) (5)

Best,
Greg



ATTACHMENT REDACTED - DELIBERATIVE

Surface and General SPR Text 10-27-10 EPA ed.docx

Js Wilson/DC/USEPA/US

11/10/2010 01:52 PM

To David Hair

cc Marcus Zobrist, Martha Segall, Michelle Schutz, Sarita Hoyt,
Sharmin Syed, Tom Lavery

bcc

Subject Re: Fw: R4 402 Permit Implementation Paper

Here is the information I have. Based on the title, invitation list, and mention of this during the 10 a.m. Tuesday call, I think this is about the Region 4/KY issue. Jim is attending. I talked to him briefly about it. He understands the issues.

Rescheduled: MTM Permitting Strategy Follow-up

Wed 11/10/2010 5:15 PM - 6:00

PM

Attendance is required for David Evans

Chair: **Bob Sussman/DC/USEPA/US**

Sent By: **Georgia Bednar/DC/USEPA/US**

(b) (6)

Bob Sussman has rescheduled this meeting. You have not added this entry to your calendar.

Required:

Ann Campbell/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA, dorfman.jordan@epa.gov, Georgia Bednar/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Gwendolyn KeyesFleming/R4/USEPA/US@EPA, Jim Giattina/R4/USEPA/US@EPA, Jim Hanlon/DC/USEPA/US@EPA, Jon Capacasa/R3/USEPA/US@EPA, Karyn Wendelowski/DC/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA, Linda Boornazian/DC/USEPA/US@EPA, Marcel Tchaou/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@EPA, Shawn Garvin/R3/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA, Steven Neugeboren/DC/USEPA/US@EPA, William Early/R3/USEPA/US

Description

Scott Wilson, Energy Coordinator
Industrial Permits Branch (4203M)
Office of Wastewater Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
202-564-6087

David Hair

Scott, I don't have the 5:15 pm meeting on my c...

11/10/2010 01:21:32 PM

From: David Hair/DC/USEPA/US
To: Js Wilson/DC/USEPA/US@EPA
Cc: Marcus Zobrist/DC/USEPA/US@EPA, Martha Segall/DC/USEPA/US@EPA, Michelle Schutz/DC/USEPA/US@EPA, Sarita Hoyt/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA, Tom Lavery/DC/USEPA/US@EPA
Date: 11/10/2010 01:21 PM
Subject: Re: Fw: R4 402 Permit Implementation Paper

Scott,

I don't have the 5:15 pm meeting on my calendar. What's the subject and who's participating?

Dave

David Hair
Environmental Engineer
USEPA - Water Permits Division
7421J - EPA East
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Phone: 202-564-2287
Fax: 202-564-6392

Js Wilson

Jim has not been involved. He is included on th...

11/10/2010 01:09:33 PM

From: Js Wilson/DC/USEPA/US
To: Tom Lavery/DC/USEPA/US@EPA
Cc: David Hair/DC/USEPA/US@EPA, Marcus Zobrist/DC/USEPA/US@EPA, Martha Segall/DC/USEPA/US@EPA, Michelle Schutz/DC/USEPA/US@EPA, Sarita Hoyt/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA
Date: 11/10/2010 01:09 PM
Subject: Re: Fw: R4 402 Permit Implementation Paper

Jim has not been involved. He is included on the invitation for the 5:15 meeting today. I think his involvement would be a good idea.

Scott Wilson, Energy Coordinator
Industrial Permits Branch (4203M)
Office of Wastewater Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
202-564-6087

Tom Lavery

Folks, (b) (5)

11/10/2010 12:37:19 PM

From: Tom Lavery/DC/USEPA/US
To: Marcus Zobrist/DC/USEPA/US@EPA, Js Wilson/DC/USEPA/US@EPA, David Hair/DC/USEPA/US@EPA, Martha Segall/DC/USEPA/US@EPA, Sarita Hoyt/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA, Michelle Schutz/DC/USEPA/US@EPA
Date: 11/10/2010 12:37 PM
Subject: Fw: R4 402 Permit Implementation Paper

Folks,

(b) (5)

Tom

----- Forwarded by Tom Lavery/DC/USEPA/US on 11/10/2010 12:34 PM -----

From: David Hair/DC/USEPA/US
To: Linda Boornazian/DC/USEPA/US@EPA, Marcus Zobrist/DC/USEPA/US@EPA, Tom Lavery/DC/USEPA/US@EPA, Chris Thomas/R4/USEPA/US@EPA, Mark Nuhfer/R4/USEPA/US@EPA, Evelyn MacKnight/R3/USEPA/US@EPA, Stefania Shamet/R3/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA
Cc: Js Wilson/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA
Date: 11/10/2010 10:39 AM
Subject: R4 402 Permit Implementation Paper

Folks,

(b) (5)

(b) (5)

David Hair
Environmental Engineer
USEPA - Water Permits Division
7421J - EPA East
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Phone: 202-564-2287
Fax: 202-564-6392

David Hair/DC/USEPA/US

11/10/2010 02:08 PM

To Js Wilson

cc

bcc

Subject Re: Fw: R4 402 Permit Implementation Paper

Thanks.

David Hair
Environmental Engineer
USEPA - Water Permits Division
7421J - EPA East
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Phone: 202-564-2287

Fax: 202-564-6392

Js Wilson

Here is the information I have. Based on the title...

11/10/2010 01:52:52 PM

From: Js Wilson/DC/USEPA/US
To: David Hair/DC/USEPA/US@EPA
Cc: Marcus Zobrist/DC/USEPA/US@EPA, Martha Segall/DC/USEPA/US@EPA, Michelle Schutz/DC/USEPA/US@EPA, Sarita Hoyt/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA, Tom Lavery/DC/USEPA/US@EPA
Date: 11/10/2010 01:52 PM
Subject: Re: Fw: R4 402 Permit Implementation Paper

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Rescheduled: MTM Permitting Strategy Follow-up

Wed 11/10/2010 5:15 PM - 6:00

PM

Attendance is **required** for David Evans

Chair: **Bob Sussman/DC/USEPA/US**

Sent By: **Georgia Bednar/DC/USEPA/US**

Location: 3309 ARN Call in number: (b) (6)

Bob Sussman has rescheduled this meeting. You have not added this entry to your calendar.

Required:

Ann Campbell/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA, dorfman.jordan@epa.gov, Georgia Bednar/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Gwendolyn KeyesFleming/R4/USEPA/US@EPA, Jim Giattina/R4/USEPA/US@EPA, Jim Hanlon/DC/USEPA/US@EPA, Jon Capacasa/R3/USEPA/US@EPA, Karyn Wendelowski/DC/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA, Linda Boornazian/DC/USEPA/US@EPA, Marcel

Tchaou/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@EPA, Shawn Garvin/R3/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA, Steven Neugeboren/DC/USEPA/US@EPA, William Early/R3/USEPA/US

Description

Scott Wilson, Energy Coordinator
Industrial Permits Branch (4203M)
Office of Wastewater Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
202-564-6087

David Hair

Scott, I don't have the 5:15 pm meeting on my c...

11/10/2010 01:21:32 PM

From: David Hair/DC/USEPA/US
To: Js Wilson/DC/USEPA/US@EPA
Cc: Marcus Zobrist/DC/USEPA/US@EPA, Martha Segall/DC/USEPA/US@EPA, Michelle Schutz/DC/USEPA/US@EPA, Sarita Hoyt/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA, Tom Lavery/DC/USEPA/US@EPA
Date: 11/10/2010 01:21 PM
Subject: Re: Fw: R4 402 Permit Implementation Paper

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Dave

David Hair

Environmental Engineer
USEPA - Water Permits Division
7421J - EPA East
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Phone: 202-564-2287
Fax: 202-564-6392

Js Wilson

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11/10/2010 01:09:33 PM

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To: Tom Lavery/DC/USEPA/US@EPA
Cc: David Hair/DC/USEPA/US@EPA, Marcus Zobrist/DC/USEPA/US@EPA, Martha Segall/DC/USEPA/US@EPA, Michelle Schutz/DC/USEPA/US@EPA, Sarita Hoyt/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA
Date: 11/10/2010 01:09 PM
Subject: Re: Fw: R4 402 Permit Implementation Paper

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Scott Wilson, Energy Coordinator
Industrial Permits Branch (4203M)
Office of Wastewater Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
202-564-6087

Tom Lavery

Folks, has Jim played a role on this issue lately?...

11/10/2010 12:37:19 PM

From: Tom Lavery/DC/USEPA/US
To: Marcus Zobrist/DC/USEPA/US@EPA, Js Wilson/DC/USEPA/US@EPA, David Hair/DC/USEPA/US@EPA, Martha Segall/DC/USEPA/US@EPA, Sarita Hoyt/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA, Michelle Schutz/DC/USEPA/US@EPA
Date: 11/10/2010 12:37 PM
Subject: Fw: R4 402 Permit Implementation Paper

Folks,

has Jim played a role on this issue lately? Do we need to get him engaged? (b) (5)

Tom

----- Forwarded by Tom Lavery/DC/USEPA/US on 11/10/2010 12:34 PM -----

From: David Hair/DC/USEPA/US
To: Linda Boornazian/DC/USEPA/US@EPA, Marcus Zobrist/DC/USEPA/US@EPA, Tom Lavery/DC/USEPA/US@EPA, Chris Thomas/R4/USEPA/US@EPA, Mark

Cc: Nuhfer/R4/USEPA/US@EPA, Evelyn MacKnight/R3/USEPA/US@EPA, Stefania
Shamet/R3/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA
Date: Js Wilson/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA
11/10/2010 10:39 AM
Subject: R4 402 Permit Implementation Paper

Folks,

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

David Hair
Environmental Engineer
USEPA - Water Permits Division
7421J - EPA East

1200 Pennsylvania Avenue, NW
Washington, DC 20460

Phone: 202-564-2287
Fax: 202-564-6392

**Matthew
Klasen/DC/USEPA/US**
11/10/2010 02:18 PM

To Brian Frazer
cc Gregory Peck, Kevin Minoli, Cliff Rader, MichaelG Lee,
Christopher Hunter
bcc
Subject Re: Fw: Draft 3(a) letter from Doe Branch Surface Mine

Hi Brian,

Thanks for circulating this to Greg and I for review, and please see attached for some proposed edits from us. We're OK with the letter with these changes.

Let me know if you have any questions about the edits or comments here.

Thanks,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch EPA Comment Draft 11-4-10 - ch - mk.doc

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Brian Frazer

Greg and Matt - Attached below is the Doe bran...

11/08/2010 02:46:33 PM

From: Brian Frazer/DC/USEPA/US
To: Gregory Peck/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA
Date: 11/08/2010 02:46 PM
Subject: Fw: Draft 3(a) letter from Doe Branch Surface Mine

Greg and Matt - Attached below is the Doe branch 3(a) letter. please review and send your comments by cob Wednesday.

Thanks,

bf

Brian M. Frazer, Chief
Wetlands & Aquatic Resources Regulatory Branch
Office of Wetlands, Oceans and Watersheds
U.S. EPA
1200 Pennsylvania Avenue, NW (MC 4502T)
Washington, DC 20460
202-566-1652

----- Forwarded by Brian Frazer/DC/USEPA/US on 11/08/2010 02:44 PM -----

From: Brian Frazer/DC/USEPA/US

To: Kevin Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA
Cc: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/05/2010 07:10 AM
Subject: Draft 3(a) letter from Doe Branch Surface Mine

Kevin, Mike and Cliff,

Wetlands Division received from Region 3 a draft 3a letter for the non-ECP Doe Branch Mine in VA letter. We have reviewed the letter and our comments are incorporated in the draft below.

The Basic information on the mine is as follows:

- 5 valley fills
- 16,000 lf of stream impacts
- 2 acres of wetland impacts
- approximately 60% remining
- Conductivity on-site is generally below 500, downstream is generally above 500.

Please review and let me and Chris Hunter know if you have any comments. The Region needs HQ comments back by **Wednesday November 10**.

Thanks,

bf

[attachment "Doe Branch EPA Comment Draft 11-4-10 - ch.doc" deleted by Matthew Klasen/DC/USEPA/US]

Brian Frazer/DC/USEPA/US

11/10/2010 03:14 PM

To Christopher Hunter

cc

bcc

Subject Fw: Fw: Draft 3(a) letter from Doe Branch Surface Mine

Chris - I'm trying to read this via bb, are you OK with the edits. Seems he's commented on the letterhead.

Brian Frazer
Chief, Wetlands & Aquatic Resources Regulatory Branch
O:202-566-1652
C:202-379-6906

Sent from my BlackBerry Wireless Handheld
Matthew Klasen

----- Original Message -----

From: Matthew Klasen

Sent: 11/10/2010 02:18 PM EST

To: Brian Frazer

Cc: Gregory Peck; Kevin Minoli; Cliff Rader; MichaelG Lee; Christopher Hunter

Subject: Re: Fw: Draft 3(a) letter from Doe Branch Surface Mine

Hi Brian,

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Let me know if you have any questions about the edits or comments here.

Thanks,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch EPA Comment Draft 11-4-10 - ch - mk.doc

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Brian Frazer

Greg and Matt - Attached below is the Doe bran...

11/08/2010 02:46:33 PM

From: Brian Frazer/DC/USEPA/US
To: Gregory Peck/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA
Date: 11/08/2010 02:46 PM
Subject: Fw: Draft 3(a) letter from Doe Branch Surface Mine

Greg and Matt - Attached below is the Doe branch 3(a) letter. please review and send your comments by cob Wednesday.

Thanks,

bf

Brian M. Frazer, Chief
Wetlands & Aquatic Resources Regulatory Branch
Office of Wetlands, Oceans and Watersheds
U.S. EPA
1200 Pennsylvania Avenue, NW (MC 4502T)
Washington, DC 20460
202-566-1652

----- Forwarded by Brian Frazer/DC/USEPA/US on 11/08/2010 02:44 PM -----

From: Brian Frazer/DC/USEPA/US
To: Kevin Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Cliff
Rader/DC/USEPA/US@EPA
Cc: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/05/2010 07:10 AM
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- approximately 60% remining
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Please review and let me and Chris Hunter know if you have any comments. The Region needs HQ comments back by **Wednesday November 10**.

Thanks,

bf

[attachment "Doe Branch EPA Comment Draft 11-4-10 - ch.doc" deleted by Matthew Klasen/DC/USEPA/US]

Matthew
Klasen/DC/USEPA/US
11/10/2010 03:37 PM

To Cliff Rader
cc Gregory Peck
bcc
Subject Cumulative impacts -- original purpose of the effort

Hey Cliff,

(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

Thanks,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

2010-06-14 Cumulative Impact Assessment Summary.doc

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

MichaelG Lee/DC/USEPA/US

11/10/2010 04:32 PM

To Brian Frazer

cc Christopher Hunter, Cliff Rader, Gregory Peck, Kevin Minoli,
Matthew Klasen

bcc

Subject Draft 3(a) letter from Doe Branch Surface Mine

I added my comments/edits to Matt's version.



xxx10.doc

ATTACHMENT REDACTED - DELIBERATIVE

Mike

Michael G. Lee
Office of General Counsel
(202) 564-5486

Brian Frazer

Matt - Thanks for sending your edits, we'll take a...

11/10/2010 02:29:37 PM

From: Brian Frazer/DC/USEPA/US
To: Matthew Klasen/DC/USEPA/US@EPA
Cc: Gregory Peck/DC/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA, Cliff
Rader/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Christopher
Hunter/DC/USEPA/US@EPA
Date: 11/10/2010 02:29 PM
Subject: Re: Fw: Draft 3(a) letter from Doe Branch Surface Mine

Matt - Thanks for sending your edits, we'll take a quick review and will forward the letter to the region. If we have any questions or concerns there I'll let you know.

bf

Brian Frazer
Chief, Wetlands & Aquatic Resources Regulatory Branch
O:202-566-1652
C:202-379-6906

Sent from my BlackBerry Wireless Handheld

Matthew Klasen

----- Original Message -----

From: Matthew Klasen
Sent: 11/10/2010 02:18 PM EST
To: Brian Frazer
Cc: Gregory Peck; Kevin Minoli; Cliff Rader; MichaelG Lee; Christopher
Hunter
Subject: Re: Fw: Draft 3(a) letter from Doe Branch Surface Mine
Hi Brian,

Thanks for circulating this to Greg and I for review, and please see attached for some proposed edits from us. We're OK with the letter with these changes.

Let me know if you have any questions about the edits or comments here.

Thanks,
Matt

[attachment "Doe Branch EPA Comment Draft 11-4-10 - ch - mk.doc" deleted by Brian Frazer/DC/USEPA/US]

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Brian Frazer

[Greg and Matt - Attached below is the Doe bran...](#)

11/08/2010 02:46:33 PM

From: Brian Frazer/DC/USEPA/US
To: Gregory Peck/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA
Date: 11/08/2010 02:46 PM
Subject: Fw: Draft 3(a) letter from Doe Branch Surface Mine

Greg and Matt - Attached below is the Doe branch 3(a) letter. please review and send your comments by cob Wednesday.

Thanks,

bf

Brian M. Frazer, Chief
Wetlands & Aquatic Resources Regulatory Branch
Office of Wetlands, Oceans and Watersheds
U.S. EPA
1200 Pennsylvania Avenue, NW (MC 4502T)
Washington, DC 20460
202-566-1652

----- Forwarded by Brian Frazer/DC/USEPA/US on 11/08/2010 02:44 PM -----

From: Brian Frazer/DC/USEPA/US
To: Kevin Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA
Cc: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/05/2010 07:10 AM
Subject: Draft 3(a) letter from Doe Branch Surface Mine

Kevin, Mike and Cliff,

Wetlands Division received from Region 3 a draft 3a letter for the non-ECP Doe Branch Mine in VA letter. We have reviewed the letter and our comments are incorporated in the draft below.

The Basic information on the mine is as follows:

- 5 valley fills
- 16,000 lf of stream impacts
- 2 acres of wetland impacts
- approximately 60% remaining
- Conductivity on-site is generally below 500, downstream is generally above 500.

Please review and let me and Chris Hunter know if you have any comments. The Region needs HQ comments back by **Wednesday November 10**.

Thanks,

bf

[attachment "Doe Branch EPA Comment Draft 11-4-10 - ch.doc" deleted by Matthew Klasen/DC/USEPA/US]

**Christopher
Hunter/DC/USEPA/US**

11/10/2010 05:09 PM

To Jessica Martinsen, Mark Douglas

cc

bcc

Subject Doe Branch compiled comments

Hi,
attached are compiled OW, OGC, and NEPA comments on the draft 3a letter for Doe Branch. If you have questions, please let me know.

Thanks,
Chris



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch 3a - HQ comments.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

**Ross
Geredien/DC/USEPA/US**

11/10/2010 05:10 PM

To Christopher Hunter, Julia McCarthy

cc

bcc

Subject Macro section

I haven't given this a final read-through, but for now I'm spent. See you Friday.



ATTACHMENT REDACTED - DELIBERATIVE

Spruce_Macro_Ross.doc

Ross Geredien
ORISE Fellow
EPA Office of Wetlands, Oceans, and Watersheds
202-566-1466
Geredien.ross(AT)epa.gov

Jaclyn
McIlwain/R3/USEPA/US
11/10/2010 06:36 PM

To Francisco Cruz
cc
bcc
Subject WV1017730 MUST BE SENT ON FRIDAY

Francisco,

Attached you will find my draft of the WV1017730 permit we discussed on Wednesday. Please review and edit as you see fit. I have left the permit file on your desk for reference, if needed. Please mail out, PDF, and leave a copy of the signed letter on my desk. I will file it on Monday.

Thank you so much! I really appreciate your help.
Have a wonderful weekend!



ATTACHMENT REDACTED - DELIBERATIVE

WV1017730 LP Mineral LLC - Wilson Surface Mine - Comment Letter.doc

Kindly,

Jaclyn McIlwain
NPDES Permits Branch (3WP41)
Water Protection Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Ph: 215.814.2713
Fax: 215.814.2302
mcilwain.jaclyn@epa.gov

Mark Douglas/R3/USEPA/US

11/12/2010 10:01 AM

To Jessica Martinsen

cc

bcc

Subject Doe Branch

Jess,

Attached is the HQ comment letter with Bill Early's comments incorporated. (b) (5)



ATTACHMENT REDACTED - DELIBERATIVE

Doe Branch 3a - HQ & BE comments 11.12.10.doc

Mark Douglas
Environmental Assessment and Innovation Division
US EPA Region 3
3EA30
1650 Arch St
Philadelphia, PA 19103
215-814-2767

David Evans/DC/USEPA/US

11/12/2010 10:18 AM

To Jim Pendergast, Christopher Hunter

cc Brian Frazer

bcc

Subject Fw: yet another agenda and talking points for 16th

Chris,

I'll be traveling (RAE) on Tuesday, Jim will be participating in the meeting, so sharing agenda with him.

Thanks for your great work on this, now in its 7th edition I believe!

Dave

David Evans, Director
Wetlands Division
Office of Wetlands, Oceans and Watersheds
(202) 566-0535

----- Forwarded by David Evans/DC/USEPA/US on 11/12/2010 10:17 AM -----

From: Christopher Hunter/DC/USEPA/US
To: David Evans/DC/USEPA/US@EPA
Date: 11/12/2010 08:43 AM
Subject: Fw: yet another agenda and talking points for 16th

As I mentioned, I drafted another set of talking points and an agenda for Tuesday's meeting. I wanted to have this ready for the 11:30 meeting in case we're expected to prepare something

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/12/2010 08:42 AM -----

From: Christopher Hunter/DC/USEPA/US
To: Brian Frazer/DC/USEPA/US@EPA
Date: 11/11/2010 09:10 PM
Subject: yet another agenda and talking points for 16th

For Pete.

Let's talk about what we'll be prepared to say as well

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454



ATTACHMENT REDACTED - DELIBERATIVE

hunter.christopher@epa.gov Agenda for November 16th Consultation Meeting.doc

Timothy
Landers/DC/USEPA/US

11/12/2010 02:20 PM

To Ross Geredien

cc

bcc

Subject Fw: EPA comments on SPR DEIS - Section 3.6

----- Forwarded by Timothy Landers/DC/USEPA/US on 11/12/2010 02:20 PM -----

From: Justin Wright/DC/USEPA/US
To: jcraynon@osmre.gov
Cc: Elaine Suriano/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA, Timothy Landers/DC/USEPA/US@EPA
Date: 11/10/2010 02:40 PM
Subject: EPA comments on SPR DEIS - Section 3.6

Hi John,

Elaine is out of the office this week; attached are our EPA comments on the surface water hydrology section of the draft EIS.

We look forward to a reconciliation meeting on Chapter 3 so that we can discuss our comments and specific environmental impacts of the draft stream protection rule. In addition to our specific comments on this section, we would like address focusing the information in Chapter 3 to make it more relevant to the decision-making process for the proposed rule.

Please let us know if you have any questions.

Thanks,

Justin Wright
U.S. Environmental Protection Agency
Office of Federal Activities
202-564-0678



ATTACHMENT REDACTED - DELIBERATIVE

EIS Comment form Chap 3.6 - EPA.docx

Jim
Pendergast/DC/USEPA/US
11/12/2010 04:35 PM

To Denise Keehner
cc Brian Frazer, David Evans, Christopher Hunter, Tanya Code
bcc
Subject Re: Fw: yet another agenda and talking points for 16th

Denise -- Following up on our biweekly discussion today, below is an email drafted by Chris to go to Randy and Greg about water quality related to the Spruce mine alternatives. Jim

Christopher Hunter [draft email for Denise to Randy and Greg _____](#) 11/12/2010 03:32:07 PM

From: Christopher Hunter/DC/USEPA/US
To: Jim Pendergast/DC/USEPA/US@EPA
Cc: Brian Frazer/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA
Date: 11/12/2010 03:32 PM
Subject: Re: Fw: yet another agenda and talking points for 16th

[draft email for Denise to Randy and Greg](#)

(b) (5)



A large rectangular area of the email body is completely redacted with a solid black box.



A large rectangular area of the email body is completely redacted with a solid black box.

Jim Pendergast [Chris -- \(b\) \(5\) _____](#) 11/12/2010 01:15:50 PM

From: Jim Pendergast/DC/USEPA/US
To: Christopher Hunter/DC/USEPA/US@EPA
Cc: Brian Frazer/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA
Date: 11/12/2010 01:15 PM
Subject: Re: Fw: yet another agenda and talking points for 16th

Chris -- (b) (5)



A large rectangular area of the email body is completely redacted with a solid black box.

Could you get this drafted for her today? There's now an 11am meeting Monday on Spruce where we may need this.

Jim

David Evans

Chris, I'll be traveling (RAE) on Tuesday, Jim will...

11/12/2010 10:18:07 AM

From: David Evans/DC/USEPA/US
To: Jim Pendergast/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA
Cc: Brian Frazer/DC/USEPA/US@EPA
Date: 11/12/2010 10:18 AM
Subject: Fw: yet another agenda and talking points for 16th

Chris,

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Thanks for your great work on this, now in its 7th edition I believe!

Dave

David Evans, Director
Wetlands Division
Office of Wetlands, Oceans and Watersheds
(202) 566-0535

----- Forwarded by David Evans/DC/USEPA/US on 11/12/2010 10:17 AM -----

From: Christopher Hunter/DC/USEPA/US
To: David Evans/DC/USEPA/US@EPA
Date: 11/12/2010 08:43 AM
Subject: Fw: yet another agenda and talking points for 16th

As I mentioned, I drafted another set of talking points and an agenda for Tuesday's meeting. I wanted to have this ready for the 11:30 meeting in case we're expected to prepare something

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/12/2010 08:42 AM -----

From: Christopher Hunter/DC/USEPA/US
To: Brian Frazer/DC/USEPA/US@EPA
Date: 11/11/2010 09:10 PM
Subject: yet another agenda and talking points for 16th

For Pete.

Let's talk about what we'll be prepared to say as well

Chris Hunter
U.S. Environmental Protection Agency

Office of Wetlands, Oceans, & Watershed
(202) 566-1454

hunter.christopher@epa.gov [attachment "Agenda for November 16th Consultation Meeting.doc" deleted
by Jim Pendergast/DC/USEPA/US]

Jim
Pendergast/DC/USEPA/US
11/12/2010 04:36 PM

To Christopher Hunter
cc Brian Frazer, David Evans, Tanya Code
bcc
Subject Re: Revised draft agenda and AAOW talking points for 16th meeting

Chris -- Thanks. Right on point and the multiple ending approach seems the better way to go here.

Brian -- We still need to find some time early Tuesday to walk Pete through this.

Jim

Christopher Hunter Including some closing remarks Chris Hunter 11/12/2010 04:06:17 PM

From: Christopher Hunter/DC/USEPA/US
To: Brian Frazer/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA, Tanya Code/DC/USEPA/US@EPA, Jim Pendergast/DC/USEPA/US@EPA
Date: 11/12/2010 04:06 PM
Subject: Revised draft agenda and AAOW talking points for 16th meeting

Including some closing remarks



ATTACHMENT REDACTED - DELIBERATIVE

Agenda for November 16th Consultation Meeting.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

Ross
Geredien/DC/USEPA/US
11/12/2010 05:08 PM

To Christopher Hunter
cc Ross Geredien
bcc
Subject Re: Indiana Bat

(b) (5)

I am 80% done with my draft. I'm sending what I have no (b) (5)

Ross



ATTACHMENT REDACTED - DELIBERATIVE

Spruce FD 102910_RPG version.docx

Ross Geredien
ORISE Fellow
EPA Office of Wetlands, Oceans, and Watersheds
202-566-1466
Geredien.ross(AT)epa.gov

Christopher Hunter Thanks Depending on how consultation goes, n... 11/12/2010 03:35:49 PM

From: Christopher Hunter/DC/USEPA/US
To: Ross Geredien/DC/USEPA/US@EPA
Cc: Julia McCarthy/R8/USEPA/US@EPA, Marcel Tchaou/DC/USEPA/US@EPA, Palmer Hough/DC/USEPA/US@EPA
Date: 11/12/2010 03:35 PM
Subject: Re: Indiana Bat

Thanks

Depending on how consultation goes, next week might be the last opportunity to get new material in before we have to start circulating. so the sooner the better.

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

Ross Geredien (b) (5) ... 11/12/2010 03:34:26 PM

From: Ross Geredien/DC/USEPA/US
To: Christopher Hunter/DC/USEPA/US@EPA, Palmer Hough/DC/USEPA/US@EPA, Julia McCarthy/R8/USEPA/US@EPA, Marcel Tchaou/DC/USEPA/US@EPA
Date: 11/12/2010 03:34 PM
Subject: Indiana Bat

(b) (5)

(b) (5)



Ross

Ross Geredien
ORISE Fellow
EPA Office of Wetlands, Oceans, and Watersheds
202-566-1466
Geredien.ross(AT)epa.gov

Tanya Code/DC/USEPA/US

11/12/2010 08:58 PM

To Denise Keehner

cc

bcc

Subject Fw: Revised draft agenda and AAOW talking points for 16th meeting

didn't see that you had this yet. Ann C is setting up a pre-brief w/Pete. Might also use it for Monday with Bob.

Tanya Code
Special Assistant
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
Tel: 202.566.1063
Fax: 202.566.1147

----- Forwarded by Tanya Code/DC/USEPA/US on 11/12/2010 08:52 PM -----

From: Jim Pendergast/DC/USEPA/US
To: Christopher Hunter/DC/USEPA/US@EPA
Cc: Brian Frazer/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA, Tanya Code/DC/USEPA/US@EPA
Date: 11/12/2010 04:36 PM
Subject: Re: Revised draft agenda and AAOW talking points for 16th meeting

Chris -- Thanks. Right on point and the multiple ending approach seems the better way to go here.

Brian -- We still need to find some time early Tuesday to walk Pete through this.

Jim

Christopher Hunter Including some closing remarks Chris Hunter 11/12/2010 04:06:17 PM

From: Christopher Hunter/DC/USEPA/US
To: Brian Frazer/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA, Tanya Code/DC/USEPA/US@EPA, Jim Pendergast/DC/USEPA/US@EPA
Date: 11/12/2010 04:06 PM
Subject: Revised draft agenda and AAOW talking points for 16th meeting

Including some closing remarks



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Agenda for November 16th Consultation Meeting.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

**Christopher
Hunter/DC/USEPA/US**

11/13/2010 05:51 PM

To Christopher Hunter

cc

bcc

Subject

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454

hunter.christopher@epa.gov



- Spruce FD 111310.doc

ATTACHMENT REDACTED - DELIBERATIVE

Ross
Geredien/DC/USEPA/US
11/14/2010 10:38 AM

To Christopher Hunter
cc Julia McCarthy, Marcel Tchaou, Palmer Hough, Brian
Topping
bcc
Subject Final Spruce Draft

Here's my final draft. I spent a lot of time on language clarification, readability, proper citations (unfortunately not all issues addressed yet), strengthening some material and arguments. Julia reworked the entire macroinvert impacts section to make it stronger, and with a few edits by me, I've included it herein.

I hope it's not too late to incorporate these changes, and hopefully most will be found to enhance the document.

Ross



ATTACHMENT REDACTED - DELIBERATIVE

Spruce FD 11_14_2010_RPG.docx

Christopher
Hunter/DC/USEPA/US
11/15/2010 04:22 PM

To Ann Campbell
cc
bcc
Subject Re: Fw: Status of Spruce TPs and materials?

and you picked up? that was certainly a short week, if he wasn't going to call you for the rest of the week.

we didn't talk, i decided not to call him back :-)

version 201....



ATTACHMENT REDACTED - DELIBERATIVE

Agenda for November 16th Consultation Meeting.doc

Ann Campbell U make a good point. He probably would not wa... 11/15/2010 04:16:40 PM

From: Ann Campbell/DC/USEPA/US
To: Christopher Hunter/DC/USEPA/US@EPA
Date: 11/15/2010 04:16 PM
Subject: Re: Fw: Status of Spruce TPs and materials?

U make a good point. He probably would not wanting to fail to retrieve the plans for his master.

Ok, so seriously--what did you say to BF. He called me again.

Ann Campbell
Special Assistant
Office of the Administrator
U.S Environmental Protection Agency

202-566-1370
202-657-3117 (Mobile)

Christopher Hunter

----- Original Message -----

From: Christopher Hunter
Sent: 11/15/2010 04:06 PM EST
To: Ann Campbell
Subject: Re: Fw: Status of Spruce TPs and materials?

if I wait another hour, the next email will probably go to me, Brian, Dave, and Denise. the only real danger is if I don't response at all, he may draft his own

Ann Campbell must.....maintain.....control..... LOL 11/15/2010 04:04:43 PM

From: Ann Campbell/DC/USEPA/US
To: Christopher Hunter/DC/USEPA/US
Date: 11/15/2010 04:04 PM
Subject: Re: Fw: Status of Spruce TPs and materials?

must.....maintain.....control..... LOL

Christopher Hunter Can you feel the angst? ----- Forwarded by Chri... 11/15/2010 04:00:46 PM

From: Christopher Hunter/DC/USEPA/US
To: Ann Campbell/DC/USEPA/US@EPA
Date: 11/15/2010 04:00 PM
Subject: Fw: Status of Spruce TPs and materials?

Can you feel the angst?

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/15/2010 04:00 PM -----

From: Matthew Klasen/DC/USEPA/US
To: Brian Frazer/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA
Cc: Gregory Peck/DC/USEPA/US@EPA
Date: 11/15/2010 03:57 PM
Subject: Status of Spruce TPs and materials?

Chris and Brian,

Just tried calling you both, and wanted to check on materials for tomorrow AM.

Hoping Greg and I can have a chance to take a quick look at some point soon, so that we don't hold up the overall process (and so we can get materials to Pete, Bob, Nancy et al. this evening.

I talked to Brian briefly after the meeting this morning, and I presume the draft agenda I sent around before the 11 am and printed out looks OK (?)

Thanks,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Christopher
Hunter/DC/USEPA/US
11/15/2010 04:24 PM

To: Brian Frazer
cc
bcc
Subject: Fw: Status of Spruce TPs and materials?

here they are, in case you want to forward them



ATTACHMENT REDACTED - DELIBERATIVE

Agenda for November 16th Consultation Meeting.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/15/2010 04:23 PM -----

From: Matthew Klasen/DC/USEPA/US
To: Brian Frazer/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA
Cc: Gregory Peck/DC/USEPA/US@EPA
Date: 11/15/2010 03:57 PM
Subject: Status of Spruce TPs and materials?

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Thanks,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Matthew
Klasen/DC/USEPA/US
11/15/2010 05:58 PM

To: Gregory Peck
cc
bcc
Subject: Re: Fw: Status of Spruce TPs and materials?

Hey Greg,

Here are my initial edits to this.

(b) (5) Deliberative Process and Attorney-Client Privilege

Thanks,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

Agenda for November 16th Consultation Meeting - mk.doc

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Brian Frazer

Matt - I had to leave the office early. Here are th...

11/15/2010 04:55:51 PM

From: Brian Frazer/DC/USEPA/US
To: "Gregory Peck" <Peck.Gregory@epamail.epa.gov>, "Matthew Klasen" <Klasen.Matthew@epamail.epa.gov>, "Mr. Jim Pendergast" <Pendergast.Jim@epamail.epa.gov>, "Denise Keehner" <Keehner.Denise@epamail.epa.gov>
Cc: Christopher Hunter/DC/USEPA/US
Date: 11/15/2010 04:55 PM
Subject: Fw: Status of Spruce TPs and materials?

Matt - I had to leave the office early. Here are the TPs and materials developed by Chris.

Brian Frazer
Chief, Wetlands & Aquatic Resources Regulatory Branch
O:202-566-1652
C:202-379-6906

Sent from my BlackBerry Wireless Handheld
Christopher Hunter

----- Original Message -----

From: Christopher Hunter
Sent: 11/15/2010 04:24 PM EST
To: Brian Frazer
Subject: Fw: Status of Spruce TPs and materials?

here they are, in case you want to forward them

[attachment "Agenda for November 16th Consultation Meeting.doc" deleted by Matthew Klasen/DC/USEPA/US]

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/15/2010 04:23 PM -----

From: Matthew Klasen/DC/USEPA/US
To: Brian Frazer/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA
Cc: Gregory Peck/DC/USEPA/US@EPA
Date: 11/15/2010 03:57 PM
Subject: Status of Spruce TPs and materials?

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Thanks,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

**Matthew
Klasen/DC/USEPA/US**

11/15/2010 06:32 PM

To Matthew Klasen
cc
bcc
Subject



----- Agenda and Annotated Agenda for Nov 15 consultation.doc

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

ATTACHMENT REDACTED - DELIBERATIVE

Matthew
Klasen/DC/USEPA/US
11/16/2010 08:22 AM

To Gregory Peck
cc
bcc
Subject Re: Combined Agenda, TPs, Qs and As

Yep, working on that now.

Did you make any changes to the agenda itself last night -- e.g., can I print out the version I sent you at 6:30 or so? Obviously the annotated version has changed.

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Gregory Peck

Can you ensure we have copies for the 8:30. Ta...

11/16/2010 08:21:28 AM

From: Gregory Peck/DC/USEPA/US
To: Matthew Klasen/DC/USEPA/US@EPA
Date: 11/16/2010 08:21 AM
Subject: Re: Combined Agenda, TPs, Qs and As

Can you ensure we have copies for the 8:30. Tanks.

Gregory E. Peck
Chief of Staff
Office of Water
U.S. E.P.A.

From: Matthew Klasen
Sent: 11/15/2010 10:57 PM EST
To: Ann Campbell; Brian Frazer; Christopher Hunter; Denise Keehner
Cc: Gregory Peck
Subject: Fw: Combined Agenda, TPs, Qs and As

FYI for tomorrow's 8:30 (pasted below).

Thanks,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

-----Forwarded by Matthew Klasen/DC/USEPA/US on 11/15/2010 10:55PM -----

To: Nancy Stoner/DC/USEPA/US@EPA, silva.pter@epa.gov

From: Gregory Peck/DC/USEPA/US
Date: 11/15/2010 09:41PM
Cc: (b) (6) K. Minoli [REDACTED], Matthew Klasen/DC/USEPA/US@EPA
Subject: Combined Agenda, TPs, Qs and As

Deliberative Document Draft (b) (5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Nancy Stoner---11/15/2010 06:40:09 PM---

(b) (5)

[REDACTED]

From: Nancy Stoner/DC/USEPA/US
To: Gregory Peck/DC/USEPA/US@EPA
Cc: (b) (6) K. Minoli, stoner nancy@epa.gov
Date: 11/15/2010 06:40 PM
Subject: Re: Draft Consultation Agenda

(b) (5)

Gregory Peck---11/15/2010 05:59:04 PM---(b) (5)

From: Gregory Peck/DC/USEPA/US
To: stoner nancy@epa.gov
Cc: (b) (6) K. Minoli
Date: 11/15/2010 05:59 PM
Subject: Draft Consultation Agenda

(b) (5)

(b) (5)

(b) (5)

Amy Caprio/R3/USEPA/US

11/16/2010 09:21 AM

To Michael Dunn

cc Bonnie Lomax, Jeffrey Lapp, Jessica Martinsen, John Pomponio, Michael DAndrea, Michele Monroe, Stefania Shamet

bcc

Subject Re: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia)
New letter after HQ coordination; RA signature

Mike - Thanks for taking care of this. I have some minor edits, but will ask Bill to look at it before give them to you.

Thanks -
Amy

Executive Assistant
U.S. EPA Region III
1650 Arch Street (3DA00)
Philadelphia, PA 19103

p: 215.814.2156
e: caprio.amy@epa.gov

Michael Dunn

Everyone, Here is one more draft of the Penn Vir...

11/15/2010 06:00:51 PM

From: Michael Dunn/R3/USEPA/US
To: Stefania Shamet/R3/USEPA/US@EPA
Cc: Bonnie Lomax/R3/USEPA/US@EPA, Jessica Martinsen/R3/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA, Michele Monroe/R3/USEPA/US@EPA, Jeffrey Lapp/R3/USEPA/US@EPA, Amy Caprio/R3/USEPA/US@EPA, Michael DAndrea/R3/USEPA/US@EPA
Date: 11/15/2010 06:00 PM
Subject: Re: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia)
New letter after HQ coordination; RA signature

Everyone,

Here is one more draft of the Penn Virginia Spruce control letter from Shawn. (b) (5)

[REDACTED] Please send comments ASAP, as I'd like to complete our review and get this to Shawn's office on Tuesday.

Thanks,
[attachment "MTMCorsaroSPRUCENov15 with HQ input.doc" deleted by Amy Caprio/R3/USEPA/US]

Michael Dunn
Environmental Assessment and Innovation Division
USEPA Mid-Atlantic Region 3
215-814-2712

dunn.michael@epa.gov

Stefania Shamet

See the attached. (b) (5)

11/10/2010 09:52:18 AM

From: Stefania Shamet/R3/USEPA/US
To: Michael Dunn/R3/USEPA/US@EPA
Cc: Bonnie Lomax/R3/USEPA/US@EPA, Jessica Martinsen/R3/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA, Michele Monroe/R3/USEPA/US@EPA
Date: 11/10/2010 09:52 AM
Subject: Re: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia) Randy's response

See the attached. (b) (5)

[attachment "MTMCorsaroSPRUCEOct21btl rev2sds.doc" deleted by Michael Dunn/R3/USEPA/US]

Michael Dunn

Stef, (b) (5)

11/09/2010 04:17:39 PM

From: Michael Dunn/R3/USEPA/US
To: Stefania Shamet/R3/USEPA/US@EPA, Jessica Martinsen/R3/USEPA/US@EPA
Cc: Michele Monroe/R3/USEPA/US@EPA, Bonnie Lomax/R3/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA
Date: 11/09/2010 04:17 PM
Subject: Re: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia) Randy's response

Stef,

(b) (5) Deliberative Process and Attorney-Client Privilege

Thanks,

[attachment "MTMCorsaroSPRUCEOct21btl rev2.doc" deleted by Stefania Shamet/R3/USEPA/US]

[attachment "penn virginia spruce control due 11.12.10.pdf" deleted by Stefania Shamet/R3/USEPA/US]

Michael Dunn
Environmental Assessment and Innovation Division
USEPA Mid-Atlantic Region 3
215-814-2712
dunn.michael@epa.gov

Bonnie Lomax

Michele - - Do you mind printing this out and put...

11/08/2010 03:54:49 PM

From: Bonnie Lomax/R3/USEPA/US
To: Michael Dunn/R3/USEPA/US@EPA
Cc: Michele Monroe/R3/USEPA/US@EPA
Date: 11/08/2010 03:54 PM
Subject: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia) Randy's response

Michele - - Do you mind printing this out and putting through concurrence? (see attachment to Randy's

message below) Thanks

Bonnie Turner-Lomax
Communications Coordinator
Environmental Assessment and Innovation Division
U.S. Environmental Protection Agency - Region 3
1650 Arch Street
Philadelphia, PA 19103


215-814-5542 - (Telephone)
215-814-2783 - (FAX)
lomax.bonnie@epa.gov

"Go confidently in the direction of your dreams. Live the life you have imagined".....Henry David Thoreau

----- Forwarded by Bonnie Lomax/R3/USEPA/US on 11/08/2010 03:51 PM -----

**John
Pomponio/R3/USEPA/US**
11/08/2010 03:40 PM

To Bonnie Lomax/R3/USEPA/US@EPA
cc

Subject Re: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia) 

Bonnie,

I made one small changer. See attached.

[attachment "MTMCorsaroSPRUCEOct21btl.doc" deleted by Michael Dunn/R3/USEPA/US]

John R. (Randy) Pomponio, Director
Environmental Assessment & Innovation Division
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

(215) 814-2702
pomponio.john@epa.gov

**Matthew
Klasen/DC/USEPA/US**
11/16/2010 09:39 AM

To Gregory Peck, Brian Frazer, Christopher Hunter, Jim
Pendergast, Palmer Hough, Nancy Stoner, Ann Campbell,
Peter Silva, Shawn Garvin, John Pomponio, Kevin Minoli,
Denise Keehner, Tanya Code, Michael Dunn

cc

bcc

Subject Final agenda & annotated agenda for 11 am Spruce
consultation

Here's a final agenda for 11 am. The only changes to this version are removing "draft" and providing an opportunity for all parties to share opening thoughts (Corps, WV, Arch, and United), not only Corps and WV. The agenda suggests limiting each to 5 minutes.

I've reflected these minor changes in the annotated version, also attached.

Let me know if you have any questions. I'll bring copies at 11.

Thanks,
Matt



Final Agenda - Spruce Consultation - November 16.docx



Final Annotated Agenda - Spruce Consultation - November 16.doc

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

ATTACHMENTS REDACTED - DELIBERATIVE

Amy Caprio/R3/USEPA/US

11/16/2010 12:03 PM

To Michael Dunn

cc Bonnie Lomax, Jeffrey Lapp, Jessica Martinsen, John Pomponio, Michael DAndrea, Michele Monroe, Stefania Shamet

bcc

Subject Re: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia)
New letter after HQ coordination; RA signature [front office edits attached]

Mike - Attached are the Front Office's suggested changes.



ATTACHMENT REDACTED - DELIBERATIVE

MTMCorsaroSPRUCENov15 with HQ input (AmyC).doc

Thanks -
Amy

Executive Assistant
U.S. EPA Region III
1650 Arch Street (3DA00)
Philadelphia, PA 19103

p: 215.814.2156
e: caprio.amy@epa.gov

Michael Dunn

Everyone, Here is one more draft of the Penn Vir...

11/15/2010 06:00:51 PM

From: Michael Dunn/R3/USEPA/US
To: Stefania Shamet/R3/USEPA/US@EPA
Cc: Bonnie Lomax/R3/USEPA/US@EPA, Jessica Martinsen/R3/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA, Michele Monroe/R3/USEPA/US@EPA, Jeffrey Lapp/R3/USEPA/US@EPA, Amy Caprio/R3/USEPA/US@EPA, Michael DAndrea/R3/USEPA/US@EPA
Date: 11/15/2010 06:00 PM
Subject: Re: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia)
New letter after HQ coordination; RA signature

Everyone,

Here is one more draft of the Penn Virginia Spruce control letter from Shawn. (b) (5)

[REDACTED] Please send comments ASAP, as I'd like to complete our review and get this to Shawn's office on Tuesday.

Thanks,
[attachment "MTMCorsaroSPRUCENov15 with HQ input.doc" deleted by Amy Caprio/R3/USEPA/US]

Michael Dunn

Environmental Assessment and Innovation Division
USEPA Mid-Atlantic Region 3
215-814-2712
dunn.michael@epa.gov

Stefania Shamet

See the attached. It needed to be revised a bit b...

11/10/2010 09:52:18 AM

From: Stefania Shamet/R3/USEPA/US
To: Michael Dunn/R3/USEPA/US@EPA
Cc: Bonnie Lomax/R3/USEPA/US@EPA, Jessica Martinsen/R3/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA, Michele Monroe/R3/USEPA/US@EPA
Date: 11/10/2010 09:52 AM
Subject: Re: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia) Randy's response

(b) (5)

[attachment "MTMCorsaroSPRUCEOct21btl rev2sds.doc" deleted by Michael Dunn/R3/USEPA/US]

Michael Dunn

Stef, (b) (5)

11/09/2010 04:17:39 PM

From: Michael Dunn/R3/USEPA/US
To: Stefania Shamet/R3/USEPA/US@EPA, Jessica Martinsen/R3/USEPA/US@EPA
Cc: Michele Monroe/R3/USEPA/US@EPA, Bonnie Lomax/R3/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA
Date: 11/09/2010 04:17 PM
Subject: Re: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia) Randy's response

Stef,

(b) (5) Deliberative Process and Attorney-Client Privilege

Thanks,

[attachment "MTMCorsaroSPRUCEOct21btl rev2.doc" deleted by Stefania Shamet/R3/USEPA/US]

[attachment "penn virginia spruce control due 11.12.10.pdf" deleted by Stefania Shamet/R3/USEPA/US]

Michael Dunn
Environmental Assessment and Innovation Division
USEPA Mid-Atlantic Region 3
215-814-2712
dunn.michael@epa.gov

Bonnie Lomax

Michele -- Do you mind printing this out and put...

11/08/2010 03:54:49 PM

From: Bonnie Lomax/R3/USEPA/US
To: Michael Dunn/R3/USEPA/US@EPA
Cc: Michele Monroe/R3/USEPA/US@EPA
Date: 11/08/2010 03:54 PM
Subject: Fw: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia)

Randy's response

Michele - - Do you mind printing this out and putting through concurrence? (see attachment to Randy's message below) Thanks

Bonnie Turner-Lomax
Communications Coordinator
Environmental Assessment and Innovation Division
U.S. Environmental Protection Agency - Region 3
1650 Arch Street
Philadelphia, PA 19103


215-814-5542 - (Telephone)
215-814-2783 - (FAX)
lomax.bonnie@epa.gov

"Go confidently in the direction of your dreams. Live the life you have imagined".....Henry David Thoreau

----- Forwarded by Bonnie Lomax/R3/USEPA/US on 11/08/2010 03:51 PM -----

**John
Pomponio/R3/USEPA/US**
11/08/2010 03:40 PM

To Bonnie Lomax/R3/USEPA/US@EPA
cc

Subject Re: Spruce No 1 - (Draft response to James Corsaro (Penn Virginia) 

Bonnie,

I made one small changer. See attached.

[attachment "MTMCorsaroSPRUCEOct21btl.doc" deleted by Michael Dunn/R3/USEPA/US]

John R. (Randy) Pomponio, Director
Environmental Assessment & Innovation Division
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

(215) 814-2702
pomponio.john@epa.gov

KevinH Miller/R4/USEPA/US

11/17/2010 04:36 PM

To Matthew Klasen

cc Brian Frazer, Brian Topping, Christopher Hunter, Cliff Rader, Duncan Powell, Gregory Peck, Heinz Mueller, Jim Pendergast, Kevin Minoli, MichaelG Lee, Philip Mancusi-Ungaro, Ross Geredien, Tom Welborn

bcc

Subject Fw: Leeco, Inc., Stacy Branch Supplemental Response (LRL-2007-0217 897-0480)

As we discussed.

Kevin H. Miller
Physical Scientist/Landscape Ecologist
Mining Section/Wetlands, Coastal and Oceans Branch
Water Protection Division/EPA Region 4
Sam Nunn Atlanta Federal Center
Mail Code 9T25/61 Forsyth Street, SW
Atlanta, GA 30303-8960

404.562.9435/404.562.9343 (fax)
miller.kevinh@epa.gov
www.epa.gov/region4/water/wetlands

----- Forwarded by KevinH Miller/R4/USEPA/US on 11/17/2010 04:33 PM -----

From: "Devine, Lee Anne LRL" <Lee.Anne.Devine@usace.army.mil>
To: KevinH Miller/R4/USEPA/US@EPA, Duncan Powell/R4/USEPA/US@EPA
Cc: "Williams, Christopher T LRL" <Christopher.T.Williams@usace.army.mil>
Date: 11/04/2010 03:22 PM
Subject: FW: Leeco, Inc., Stacy Branch Supplemental Response

Attached is Leeco's draft response to things we discussed on Tuesday.

Lee Anne Devine
Chief, South Section
Regulatory Branch
Louisville District
US Army Corps of Engineers
(502)315-6692

Comments on our Regulatory Services are invited:

http://ice.disa.mil/index.cfm?fa=card&site_id=915&service_provider_id=116097

-----Original Message-----

From: Larry Adams [<mailto:ladams@ermc2.us>]

Sent: Thursday, November 04, 2010 2:43 PM

To: Devine, Lee Anne LRL

Cc: Brian Patton; Bill Johnson; Kelly Short; Michael Ricci; Joshua Howard; jsgardner@engrservices.com; Karen Rose

Subject: Leeco, Inc., Stacy Branch Supplemental Response

Lee Ann-

Please find an initial draft of Leeco, Inc.'s supplemental response to EPA's comments on the Stacy Branch Mine attached for your review. I am forwarding our comments prior to Leeco, Inc.'s full internal review so that you may have a chance to consider prior to our meeting tomorrow morning. For this reason, please consider these comments as a preliminary draft.

In terms of protocol, should I forward to EPA or will you?

Thanks again for your willingness to continue to meet and discuss the remaining issues.

Larry D. Adams, P.E.

Senior Vice President

Environmental Resources Management

Consulting Company, LLC

2265 Harrodsburg Road, Suite 200

Lexington, Kentucky 40504

859-381-1000 (voice)

859-685-1085 (direct)

859-489-5340 (cell)

859-381-1005 (fax)

Visit us at our website at <http://www.ermc2.us> <<http://www.ermc2.us/>>

ERMCMNEWERMCM-STAGG

NOTICE: This e-mail and any files transmitted with it are private and confidential, and are solely for the use of the addressee. This e-mail may contain material which is legally privileged. If you are not the addressee or the person responsible for delivery to the addressee, be advised that you have received this e-mail in error and that any use of it or its contents is strictly prohibited. If you have received this e-mail in error, please notify the sender of the e-mail immediately. Internet communications are not secure and therefore the sender does not accept any responsibility for the contents of this e-mail or its attachments.

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image002.gif



image001.png



Stacy Brach Supplemental Response - EPA Comments.docx



ErMC²



Michael Dunn/R3/USEPA/US

11/17/2010 05:53 PM

To Matthew Klasen

cc

bcc

Subject Radar chart

Matt,

Here's the chart that I made for our Coal Mac briefings. I think this is the one you asked for to use in the Leeco Brief. The first one shows some mine names, but no VF numbers, the second shows VF numbers, and the raw data is the last page. You'll see that it should be used for illustration only.

The actual document is done in SmartDraw, so let me know if you need edits or additions. You may or may not have access to that program.



ATTACHMENT REDACTED - DELIBERATIVE

WV ECP Mining Radar Chart Oct 10.ppt

Michael Dunn
Environmental Assessment and Innovation Division
USEPA Mid-Atlantic Region 3
215-814-2712
dunn.michael@epa.gov

Michael Dunn/R3/USEPA/US

11/17/2010 06:14 PM

To Stefania Shamet, Joy Gillespie, Evelyn MacKnight

cc John Pomponio

bcc

Subject Flowchart

Here's a copy of the flowchart from yesterday...Yes, it's already out of date and needs to be refined.

But, feel free to use/fix it at your meeting tomorrow - or whenever it happens. I will be back in on Monday and can refine it to your specs.



ATTACHMENT REDACTED - DELIBERATIVE

402 conductivity flowchart draft.ppt

Michael Dunn
Environmental Assessment and Innovation Division
USEPA Mid-Atlantic Region 3
215-814-2712
dunn.michael@epa.gov

**Matthew
Klasen/DC/USEPA/US**

11/17/2010 06:25 PM

To Gregory Peck

cc

bcc

Subject Draft Leeco slides

Take a look -- I'm basically through slide 8 with the formatting and tone that I think makes sense. Hope to get this to R4 early tomorrow, and I'll work on things after slide 8 tonight.

mk



ATTACHMENT REDACTED - DELIBERATIVE

Leeco-Stacy Branch - mk.pptx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

**Cynthia
Giles-AA/DC/USEPA/US**
Sent by: Linda Huffman

11/18/2010 09:26 AM

To 'hargrove.robert, 'JPizarchik, 'meg.e.gaffney-smith, 'rock.salt,
chip.smith, christy_johnsonhughes, Cliff Rader, Dave_Stout,
John Pomponio, Lauren_D._Leuck, Matthew Klasen,
mccabe.catherine, michael_j._boots, Susan Bromm
cc Doreen Cantor, Kyndall Barry

bcc

Subject MTM Cumulative Impacts Meeting

Meeting

Date 12/13/2010

Time 12:30:00 PM to 03:00:00 PM

Chair Cynthia Giles-AA

Invitees

Required chip.smith; Christy_JohnsonHughes; Cliff Rader; Dave_Stout; John
Pomponio; Lauren_D._Leuck; Matt Bogoshian; Matthew Klasen; mboots;
mccabe.catherine; rock.salt; Susan Bromm

Optional barbara.cassady; Beers.Samantha; Bill Jenkins; Brian Frazer; bwinters;
Christopher Hunter; david.b.olson; dhartos; Doreen Cantor; Gregory Peck;
Heather Case; Heinz Mueller; Kenneth Westlake; Kyndall Barry; Lisa Garcia;
mthompson; pmcilwain; srideout; Suzi Ruhl; Tammy.R.Fudge; Tinka Hyde;
Tom Marshall; tshope; Yong.J.Chung

FYI

Location EPA Headquarters, 1200
Pennsylvania Avenue, N.W.,
Washington, D.C., Room 3216 Ariel
Rios South Building

AGENDA ATTACHED:



ATTACHMENT REDACTED - DELIBERATIVE

venn diagram-2.docx



ATTACHMENT REDACTED - DELIBERATIVE

agenda - Cumulative Impact Assessment for Surface Coal Mining in Appalachia.docx



ATTACHMENT REDACTED - DELIBERATIVE

MTMCumulative Effects Proposal_description12_8_10 final.docx

As agreed to on the Principals conference call last week, we are expanding the schedule for our upcoming December 13 meeting to allow time for more detailed discussions about our work on cumulative impact assessment (new time: 12:30 pm - 3:00 pm).

We also agreed that each agency (EPA, COE, OSM) will circulate a short outline by December 8 of what methodology/approach they are working on (5 pages or less would be best), a schedule for what is proposed to be accomplished, and how the methodology/approach will be used.

At the December 13 meeting, both Principals and staff will attend; the meeting will start with 15 minute summaries from each of the three agencies, followed by clarifying questions.

(b) (5)

A large black rectangular redaction box covering several lines of text. The text "(b) (5)" is visible at the top left of the redacted area.

Please confirm your attendance for the meeting with Linda Huffman at Huffman.Linda@epa.gov or 202-564-2440.

Mark Douglas/R3/USEPA/US

11/18/2010 10:29 AM

To Jeffrey Lapp, Jessica Martinsen

cc

bcc

Subject Fw: 402/404 Flowchart

Below is a draft of the 402 "clean streams" effort that I have been participating in.

Mark Douglas
Environmental Assessment and Innovation Division
US EPA Region 3
3EA30
1650 Arch St
Philadelphia, PA 19103
215-814-2767

----- Forwarded by Mark Douglas/R3/USEPA/US on 11/18/2010 10:28 AM -----

From: Joy Gillespie/R3/USEPA/US
To: David Rider/R3/USEPA/US@EPA, Jaclyn McIlwain/R3/USEPA/US@EPA, Steven Donohue/R3/USEPA/US@EPA, Bette Conway/R3/USEPA/US@EPA, Francisco Cruz/R3/USEPA/US@EPA, Mark Douglas/R3/USEPA/US@EPA
Date: 11/18/2010 10:16 AM
Subject: Fw: 402/404 Flowchart

----- Forwarded by Joy Gillespie/R3/USEPA/US on 11/18/2010 10:14 AM -----

From: Michael Dunn/R3/USEPA/US
To: Stefania Shamet/R3/USEPA/US@EPA, Joy Gillespie/R3/USEPA/US@EPA, Evelyn MacKnight/R3/USEPA/US@EPA
Cc: John Pomponio/R3/USEPA/US@EPA
Date: 11/17/2010 06:14 PM
Subject: Flowchart

Here's a copy of the flowchart from yesterday... Yes, it's already out of date and needs to be refined.

But, feel free to use/fix it at your meeting tomorrow - or whenever it happens. I will be back in on Monday and can refine it to your specs.



Document Withheld-FOIA(b)(5)

402 conductivity flowchart draft.ppt

Michael Dunn
Environmental Assessment and Innovation Division
USEPA Mid-Atlantic Region 3
215-814-2712
dunn.michael@epa.gov

Gregory Peck/DC/USEPA/US

11/18/2010 02:21 PM

To Matthew Klasen, Kevin Minoli

cc

bcc

Subject Revised Spruce Letter

I've proposed a somewhat different tack after discussions with Pete - what do you think? Please send any edits/comments as soon as possible.

Thanks.

Greg



ATTACHMENT REDACTED - DELIBERATIVE

2010-11-18 Draft Spruce Consultation Response to Arch Coal.docx

**Matthew
Klasen/DC/USEPA/US**
11/18/2010 03:41 PM

To Ann Campbell
cc Jordan Dorfman, Daniel Gerasimowicz, Gregory Peck, Brian
Frazer
bcc
Subject Fw: final PowerPoint for 11/19/10 briefing on Leeco/Stacy
Branch (LRL-2007-0217, 897-0480)

Hi Ann,

Here's the final PPT for the 11-11:45 meeting tomorrow morning on Stacy Branch. Apologies for this being a bit later than expected.

We may have a briefing sheet and/or letter to add to this package this afternoon or tomorrow AM.

Thanks,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

----- Forwarded by Matthew Klasen/DC/USEPA/US on 11/18/2010 03:39 PM -----

From: KevinH Miller/R4/USEPA/US
To: Gwendolyn KeyesFleming/R4/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA, Jim
Giattina/R4/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Brian
Topping/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA, Cliff
Rader/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Heinz
Mueller/R4/USEPA/US@EPA, Jim Pendergast/DC/USEPA/US@EPA, Kevin
Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Philip
Mancusi-Ungaro/R4/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA, Matthew
Klasen/DC/USEPA/US@EPA, Tom Welborn/R4/USEPA/US@EPA, Duncan
Powell/R4/USEPA/US@EPA, Stephanie Fulton/R4/USEPA/US@EPA, Beth
Walls/R4/USEPA/US@EPA, Daniel Holliman/R4/USEPA/US@EPA
Date: 11/18/2010 02:23 PM
Subject: final PowerPoint for 11/19/10 briefing on Leeco/Stacy Branch (LRL-2007-0217, 897-0480)



ATTACHMENT REDACTED - DELIBERATIVE

Leeco-Stacy Branch 897-0480_v3.1 111810.pptx

Kevin H. Miller
Physical Scientist/Landscape Ecologist
Mining Section/Wetlands, Coastal and Oceans Branch
Water Protection Division/EPA Region 4
Sam Nunn Atlanta Federal Center
Mail Code 9T25/61 Forsyth Street, SW
Atlanta, GA 30303-8960

404.562.9435/404.562.9343 (fax)
miller.kevinh@epa.gov
www.epa.gov/region4/water/wetlands

**Matthew
Klasen/DC/USEPA/US**
11/18/2010 03:51 PM

To Gregory Peck
cc Kevin Minoli
bcc
Subject Re: Revised Spruce Letter

Hey Greg,

Looks good. Just one substantive edit to clarify that Arch is saying it thinks the Arch-suggested alternatives they've already provided would be sufficient to protect water quality.

mk



ATTACHMENT REDACTED - DELIBERATIVE

2010-11-18 Draft Spruce Consultation Response to Arch Coal - mk.docx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Gregory Peck

I've proposed a somewhat different tack after dis...

11/18/2010 02:23:26 PM

From: Gregory Peck/DC/USEPA/US
To: Matthew Klasen/DC/USEPA/US@EPA, Kevin Minoli
Date: 11/18/2010 02:23 PM
Subject: Revised Spruce Letter

I've proposed a somewhat different tack after discussions with Pete - what do you think? Please send any edits/comments as soon as possible.

Thanks.

Greg

[attachment "2010-11-18 Draft Spruce Consultation Response to Arch Coal.docx" deleted by Matthew Klasen/DC/USEPA/US]

**Matthew
Klasen/DC/USEPA/US**
11/18/2010 05:17 PM

To Ann Campbell
cc Jordan Dorfman, Daniel Gerasimowicz, Gregory Peck, Brian
Frazer
bcc
Subject Fw: revised briefing sheet for 11/19/10 briefing on
Leeco/Stacy Branch (LRL-2007-0217, 897-0480)

Hi Ann,

Here's a copy of the briefing sheet for tomorrow morning's Leeco meeting. Dan, could you add this to the calendar invitation for tomorrow as well?

Again, apologies for the delay in getting these up to the AO.

Thanks,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

----- Forwarded by Matthew Klasen/DC/USEPA/US on 11/18/2010 05:15 PM -----

From: KevinH Miller/R4/USEPA/US
To: Matthew Klasen/DC/USEPA/US@EPA
Cc: Gwendolyn KeyesFleming/R4/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA, Jim
Giattina/R4/USEPA/US@EPA, Philip Mancusi-Ungaro/R4/USEPA/US@EPA, Tom
Welborn/R4/USEPA/US@EPA, Duncan Powell/R4/USEPA/US@EPA, Heinz
Mueller/R4/USEPA/US@EPA, Beth Walls/R4/USEPA/US@EPA, Daniel
Holliman/R4/USEPA/US@EPA, Kip Tyler/R4/USEPA/US@EPA, Karrie-Jo
Shell/R4/USEPA/US@EPA, Mark Nuhfer/R4/USEPA/US@EPA, Chris
Thomas/R4/USEPA/US@EPA, Stephanie Fulton/R4/USEPA/US@EPA
Date: 11/18/2010 04:59 PM
Subject: revised briefing sheet for 11/19/10 briefing on Leeco/Stacy Branch (LRL-2007-0217, 897-0480)

Matt,

Attached is the briefing sheet to attach to the meeting invite. As we discussed, I have revised it to reflect the briefing PowerPoint.

If you have questions, I will be here for a bit longer, but then can be reached on my cell: 252.943.7576.

Thanks for all your help with this.

Talk with you tomorrow!

Kevin



ATTACHMENT REDACTED - DELIBERATIVE

LRL-2007-00127, Leeco-Stacy Branch Briefing Sheet.111810.docx

Kevin H. Miller

Physical Scientist/Landscape Ecologist
Mining Section/Wetlands, Coastal and Oceans Branch
Water Protection Division/EPA Region 4
Sam Nunn Atlanta Federal Center
Mail Code 9T25/61 Forsyth Street, SW
Atlanta, GA 30303-8960

404.562.9435/404.562.9343 (fax)
miller.kevinh@epa.gov
www.epa.gov/region4/water/wetlands

Nancy Stoner/DC/USEPA/US

11/18/2010 07:10 PM

To Gregory Peck

cc Kevin Minoli, Matthew Klasen, Peter Silva

bcc

Subject Re: New Spruce Letter

much improved

I have a few suggestions per the attached



ATTACHMENT REDACTED - DELIBERATIVE

2010-11-18 Draft Spruce Consultation Response to Arch Coal nks.docx

Gregory Peck

[Pete/Nancy Attached is the revised draft of the S...](#)

11/18/2010 05:35:03 PM

From: Gregory Peck/DC/USEPA/US
To: Peter Silva/DC/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@EPA
Cc: Matthew Klasen/DC/USEPA/US@EPA, Kevin Minoli
Date: 11/18/2010 05:35 PM
Subject: New Spruce Letter

Pete/Nancy

Attached is the revised draft of the Spruce consultation letter that reflects our discussion earlier this afternoon and has been reviewed in OGC. Please let me know if you have any questions or would like to include additional changes. When you're comfortable - i can send a draft to Ann Campbell.

Greg

[attachment "2010-11-18 Draft Spruce Consultation Response to Arch Coal v.1.docx" deleted by Nancy Stoner/DC/USEPA/US]

KevinH Miller/R4/USEPA/US
11/19/2010 09:00 AM

To Ross Geredien
cc Matthew Klasen, Duncan Powell, Christopher Hunter, Tom Welborn
bcc
Subject Re: final PowerPoint for 11/19/10 briefing on Leeco/Stacy Branch (LRL-2007-0217, 897-0480)

(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kevin H. Miller
Physical Scientist/Landscape Ecologist
Mining Section/Wetlands, Coastal and Ocean Branch
Water Protection Division
EPA Region 4
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61 Forsyth Street, SW
Atlanta, GA 30303-8960

404.562.9435
404.562.9343 (fax)
miller.kevinh@epa.gov
www.epa.gov/region4/water/wetlands

-----Ross Geredien/DC/USEPA/US wrote: -----

To: KevinH Miller/R4/USEPA/US@EPA
From: Ross Geredien/DC/USEPA/US
Date: 11/19/2010 08:46AM
Cc: Matthew Klasen/DC/USEPA/US@EPA, Duncan Powell/R4/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA, Tom Welborn/R4/USEPA/US@EPA
Subject: Re: final PowerPoint for 11/19/10 briefing on Leeco/Stacy Branch (LRL-2007-0217, 897-0480)

Map of Carr Fork Watershed (HUC12). Is the Elk Fork Mine on here?

(See attached file: *Leeco_HUC12_CarrFork_Map.pdf*)

Ross Geredien
ORISE Fellow
EPA Office of Wetlands, Oceans, and Watersheds
202-566-1466
Geredien.ross(AT)epa.gov

KevinH Miller---11/18/2010 02:22:28

PM----- Kevin H. Mill

Fro KevinH Miller/R4/USEPA/US
m:
To: Gwendolyn KeyesFleming/R4/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA, Jim Giattina/R4/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Brian Topping/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Heinz Mueller/R4/USEPA/US@EPA, Jim Pendergast/DC/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Philip Mancusi-Ungaro/R4/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA, Tom Welborn/R4/USEPA/US@EPA, Duncan Powell/R4/USEPA/US@EPA, Stephanie Fulton/R4/USEPA/US@EPA, Beth Walls/R4/USEPA/US@EPA, Daniel Holliman/R4/USEPA/US@EPA
Dat 11/18/2010 02:22 PM
e:
Sub final PowerPoint for 11/19/10 briefing on Leeco/Stacy Branch (LRL-2007-0217, 897-0480)
ject
:

[attachment "Leeco-Stacy Branch 897-0480_v3.1 111810.pptx" deleted by Ross Geredien/DC/USEPA/US]

Kevin H. Miller
Physical Scientist/Landscape Ecologist
Mining Section/Wetlands, Coastal and Oceans Branch
Water Protection Division/EPA Region 4

Sam Nunn Atlanta Federal Center
Mail Code 9T25/61 Forsyth Street, SW
Atlanta, GA 30303-8960

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miller.kevinh@epa.gov
www.epa.gov/region4/water/wetlands

[attachment "Leeco_HUC12_CarrFork_Map.pdf" removed by KevinH Miller/R4/USEPA/US]

Gregory Peck/DC/USEPA/US

11/19/2010 09:13 AM

To Ann Campbell

cc Kevin Minoli, Matthew Klasen, Jordan Dorfman

bcc

Subject Spruce Consultation Letter

Ann

Here's a draft letter to Arch Coal approved by Pete and reviewed in OGC. Let us know if you have questions.

Greg



ATTACHMENT REDACTED - DELIBERATIVE

2010-11-18 Draft Spruce Consultation Response to Arch Coal v.1.docx

Deborah
Nagle/DC/USEPA/US
11/19/2010 09:53 AM

To David Hair, Js Wilson, Marcus Zobrist
cc
bcc
Subject YOU Need to ATTEND Fw: Rescheduled: Long-Term Option
for Addressing Mountain Top Mining (Dec 16 02:00 PM EST
(b) (6)

here is a meeting on long-term MTM you need to put on your calendar

Deborah Nagle
Associate Director
Water Permits Division
MC 4203M
1200 Pennsylvania Ave, NW
Washington, DC 20460
Tel: (202) 564-1185
FAX: (202) 564-6392

----- Forwarded by Deborah Nagle/DC/USEPA/US on 11/19/2010 09:52 AM -----

Rescheduled: Long-Term Option for Addressing Mountain Top Mining

Thu 12/16/2010 2:00 PM - 3:00
PM

Attendance is required for Deborah Nagle

Chair: Nancy Stoner/DC/USEPA/US

Sent By: Martha Workman/DC/USEPA/US

(b) (6)

This reschedule notice has been applied to the meeting.

Required:

Bob Sussman/DC/USEPA/US@EPA, Cynthia Giles-AA/DC/USEPA/US@EPA, Deborah Nagle/DC/USEPA/US, Denise Keehner/DC/USEPA/US@EPA, Ephraim King/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Jim Hanlon/DC/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA, Peter Silva/DC/USEPA/US@EPA, pollins.mark@epa.gov

Optional:

Benita Best-Wong/DC/USEPA/US@EPA, Connie Sykes/DC/USEPA/US@EPA, Darren Reid/DC/USEPA/US@EPA, Georgia Bednar/DC/USEPA/US@EPA, Jody Ramsey/DC/USEPA/US@EPA, Linda Huffman/DC/USEPA/US@EPA, Lynn Zipf/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA, Randy Hill/DC/USEPA/US@EPA, Tanya Code/DC/USEPA/US@EPA

Description



Preliminary Policy Options for Addressing Surface Coal Mining (Draft 10-28-10).doc

ATTACHMENT REDACTED - DELIBERATIVE

Matthew
Klasen/DC/USEPA/US
11/19/2010 04:18 PM

To Jim Pendergast
cc Gregory Peck, Brian Frazer
bcc
Subject Re: Briefing Materials for Sussman/Stoner on Stream
Protection Rule

Hi Jim,

This looks good, and thanks for having folks pull this together. Greg and I haven't had a chance to focus on this as much as we'd like, so we may make a few tweaks over the weekend on Monday. We also might want to set up a call early Monday to make sure we're aligned before the chat on Monday afternoon.

I made one change in the attached in the first sentence (replacing ECP with June 11, 2009 MOU), but otherwise I think this is good to add to the invite for the meeting. I can send to the AO if you'd like.

Thanks,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

Stream Protection Rule Talking Points v2.docx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Jim Pendergast

Matt & Greg -- Please look this over and send m...

11/19/2010 03:50:53 PM

From: Jim Pendergast/DC/USEPA/US
To: Matthew Klasen/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA
Date: 11/19/2010 03:50 PM
Subject: Briefing Materials for Sussman/Stoner on Stream Protection Rule










Matt & Greg -- Please look this over and send me any comments. I know it's late Friday, but this got caught in the email traffic.

Jim Pendergast
Associate Director, Wetlands Division (MC 4502T)
Office of Wetlands, Oceans & Watersheds, OW
US EPA
202-566-0398 (phone)

[attachment "Stream Protection Rule Talking Points v2.docx" deleted by Matthew Klasen/DC/USEPA/US]

**Matthew
Klasen/DC/USEPA/US**
11/19/2010 04:22 PM

To Matthew Klasen
cc
bcc
Subject stuff

 
ENV_DEFENSE-#498785-v1-NMA_PI_Draft_Surreply - mk.DOC 10daynoticeMEMO.pdf
 
Stream Protection Rule Talking Points v2.docx 2010-11-12 Cumulative impact legal provisions.docx
  
2010-11-16 Spruce Consultation Notes.docx iwfile.pdf oa_memo_nov2010.pdf
 
2010-11-18 Draft Condensed O'w Congressional Priorities.docx 2010-11-18 Draft Expanded O'w Congressional Priorities.docx

WORD ATTACHMENTS REDACTED - DELIBERATIVE

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
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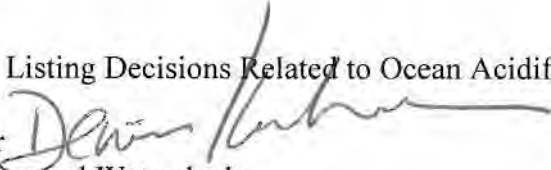
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 15 2010

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Integrated Reporting and Listing Decisions Related to Ocean Acidification

FROM: Denise Keehner, Director 
Office of Wetlands, Oceans and Watersheds

TO: Water Division Directors, Regions 1 - 10

The purpose of this Memorandum is to provide information to assist the Regions and States in preparing and reviewing Integrated Reports related to ocean acidification (OA) impacts under Sections 303(d), 305(b), and 314 of the Clean Water Act (CWA). You may recall that EPA settled a lawsuit in which the Center for Biological Diversity (CBD) challenged EPA's approval of Washington State's 2008 CWA 303(d) list, arguing failure to include coastal waters as impaired for marine pH [*CBD v. EPA*, No. 2:09-cv-00670-JCC (W. D. Wash.)]. One of the conditions of the settlement agreement was that EPA would issue this Memorandum by November 15, 2010, describing how EPA will proceed with regard to the interplay between OA and the 303(d) program. This Memorandum recognizes the seriousness of aquatic life impacts associated with OA and describes how States can move forward, where OA information exists, to address OA during the 2012 listing cycle using the current 303(d) Integrated Reporting (IR) framework. At the same time, this Memorandum also acknowledges and recognizes that in the case of OA, information is largely absent or limited at this point in time to support the listing of waters for OA in many States.

I. Background

Ocean acidification refers to the decrease in the pH of the Earth's oceans caused by the uptake of carbon dioxide, a greenhouse gas (GHG), from the atmosphere. Ocean acidification, like climate change, is primarily caused by increasing carbon dioxide (CO₂) concentrations in the atmosphere. As a result of absorbing large quantities of human-made CO₂ emissions, ocean chemistry is changing, which is likely to negatively affect important marine ecosystems and species including coral reefs, shellfish, and fisheries. In addition, OA could cause these ecosystems to become even more vulnerable to other environmental impacts, especially those from climate change, such as increases in sea surface temperatures (NRC 2010; Ridgwell and Schmidt 2010; US EPA 2009b, 2010c; NOAA 2008; Hoegh-Guldberg et al. 2007).

EPA's actions under the Clean Air Act (CAA) to better understand and address the environmental impacts associated with greenhouse gas (GHG) emissions, including OA and climate change, currently show the greatest promise in addressing these serious environmental

challenges. For example, under the CAA, EPA finalized the Mandatory Reporting of Greenhouse Gases rule, thereby creating a GHG reporting program to collect comprehensive, nationwide emissions data; issued the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the CAA; and developed several GHG mitigation regulations for light-, medium-, and heavy-duty vehicles and for new and existing industrial facilities that substantially increase GHG emissions. At the same time, EPA also recognizes that the 303(d) program under the CWA has the potential to complement and aid in these efforts by ensuring that, over time, we continue to identify and track waters that are impaired due to OA.

II. Summary of Federal Register Notice and Comments Received

EPA published a Federal Register (FR) notice on March 22, 2010, requesting public comment on what considerations EPA should take into account when deciding how to address the listing of waters as threatened or impaired by OA under the CWA section 303(d) program, including how to develop Total Maximum Daily Loads (TMDLs) for such listed waters. The 60-day comment period on the FR notice ended on May 21, 2010, and resulted in approximately 30,000 responses, the majority of which were form letters expressing general support for EPA to take immediate action regarding OA (EPA Docket ID No. OW-2010-0175, at <http://www.regulations.gov>). About 35 individual responses (from State Agencies, environmental non-governmental organizations, academia, industry, and representatives from Congress) provided the Agency with detailed comments and recommendations on OA and the 303(d) program. Many commenters indicated their support for EPA to take both short and long-term action to address OA under the CWA. Several commenters indicated that the natural daily and seasonal variability of marine pH makes it difficult to implement the criteria. Other commenters suggested using modeling methods to identify a baseline for marine pH and recommended that States consider monitoring for other OA parameters besides marine pH (e.g., dissolved inorganic carbon [DIC], partial pressure of CO₂ [pCO₂], and/or total alkalinity [TA]) to better reflect OA impacts.

A number of commenters stated that although evaluating OA impacts is challenging, some monitoring technologies do exist and are available through other programs and academic institutions. Several commenters indicated that States need detailed guidance and resources to develop and implement consistent and comprehensive State monitoring and assessment programs for marine pH criteria and other biological endpoints that reflect adverse OA impacts. A number of commenters stated that warm water coral reefs were particularly vulnerable to OA, and that some technical methods exist to help States develop coral reef biological criteria as another way to protect coastal waters from OA impacts. Other commenters suggested that States can coordinate and leverage existing Federal and other water sampling programs as they develop their OA monitoring and assessment methodologies. Several commenters indicated that EPA should not address OA at all under the CWA, but defer to the CAA to identify and manage CO₂ emissions that lead to OA. A few commenters stated that even if waters were listed for OA impairment, it would be extremely difficult to develop OA-related carbon TMDLs because of the lack of available methods and data.

III. Additional Information on Ocean Acidification

After the FR notice comment period closed, EPA evaluated additional information, programs, and resources to consider how to approach OA under the 303(d) program, which are briefly described below:

(1) National Research Council (NRC) Report: At the request of the U.S. Congress, the NRC published a report titled, “Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean”, the goal of which was to review the current state of knowledge and identify key gaps in information to help Federal agencies develop a program to improve OA understanding and address the consequences of OA (NRC 2010). Overall, the report concludes that OA science is complex and in its early stages, but that there is evidence that it is a growing problem which will intensify with continued CO₂ emissions, and will adversely affect marine ecosystems such as marine fisheries, shellfish harvests, and coral reefs. The report states that a national comprehensive monitoring and assessment network does not exist to establish baselines for OA parameters (including marine pH) needed to adequately evaluate OA effects, but a number of current sites and surveys are available to serve as a backbone for a national OA observational network. The report also states that chemical parameters and methods for OA are well-established, but not for biological metrics. In addition, the report indicates that existing knowledge of natural baselines for marine pH is limited because many data sets lack sufficient monitoring details to be useful in estimating trends. The NRC also suggests other chemical parameters be monitored along with marine pH to more accurately reflect OA impacts (e.g., pCO₂, DIC, TA). Finally, the NRC recommends that the Federal government establish a National OA Program for understanding and responding to OA.

(2) Future Federal Action: Ocean Acidification has emerged as a top priority within various Federal efforts. The following are two key actions addressing scientific and technical OA issues, and in turn, should provide useful OA information for the 303(d) program:

(a) The National Ocean Council (NOC): On July 19, 2010, President Obama issued Executive Order (EO) 13547 that establishes the Nation’s first comprehensive National Ocean Policy for the stewardship of the ocean, our coasts, and the Great Lakes (Obama 2010). The EO created an interagency National Ocean Council with the intent to strengthen ocean governance and provide sustained, high-level focus on the national priority action objectives to advance the National Policy (available at <http://www.whitehouse.gov/administration/eop/oceans>). The NOC is charged with developing Strategy Action Plans for nine priority objectives, including “Climate Change Adaptation and Ocean Acidification”. Upon approval by the NOC, these 2011 action plans will guide Federal government-wide implementation of ocean policy-related activities and budgets, including development of a flexible framework for effective coastal and marine spatial monitoring and planning.

(b) The Interagency Working Group on Ocean Acidification: The Federal Ocean Acidification Research and Monitoring (FOARAM) Act of 2009 directed the Joint Subcommittee on Science and Technology (JSOST) to create an Interagency Working Group on Ocean Acidification (IWG-OA) to coordinate OA activities across Federal agencies. This Interagency Committee, in which EPA participates, is responsible for organizing and expanding research programs with the

following goals: to enhance understanding of the role of OA on marine ecosystems, identify marine ecosystem conservation measures, facilitate information exchange on OA methods, and investigate the socioeconomic impacts of OA. The IWG-OA is drafting a strategic research plan for OA, to be completed in 2011. An initial report on the plan's progress, including a summary of existing Federally-funded OA research and monitoring activities, including their budgets, was recently completed (IWG-OA 2010).

(3) OA Criteria: Currently all 23 coastal States and five Territories (hereafter referred to as "States") have marine pH water quality criteria (WQC) in place that are similar to EPA's CWA 304(a)(1) recommended national criterion: "pH range of 6.5 to 8.5 for marine aquatic life, but not varying more than 0.2 units outside of the normally occurring range." In addition, more than half the States have coastal monitoring programs. Although EPA recently approved Puerto Rico's 2010 303(d) list that included five waters impaired by marine pH, the majority of the States do not have detailed monitoring protocols, assessment methods, or the high-resolution equipment needed to measure and implement the marine pH criteria. In particular, in most coastal regions data are not readily available to characterize short-term marine pH diurnal and seasonal variability, or to quantify a normally occurring pH "baseline" necessary to identify variation from natural and any long term trends (NRC 2010). After reviewing a wide range of information received in response to a Notice of Data Availability (NODA) on Ocean Acidification and Marine pH Water Quality Criteria (US EPA 2009c), EPA decided against revising the national marine pH criterion for aquatic life due to insufficient data (US EPA 2010b). Finally, only a handful of States have WQC for other OA parameters (e.g., dissolved gases, including CO₂), and most are not actively monitoring for these parameters. A few States have narrative or numeric biocriteria for marine waters with coral reefs that could reflect OA impacts. States will need to continue to use their current marine pH criteria as a basis for 303(d) listing until additional OA criteria are adopted.

IV. Decision Regarding OA and 303(d) Program

EPA has carefully reviewed and considered information received from public comments, other Federal OA programs, and additional scientific information available on this issue in deciding how to approach OA under the 303(d) program. EPA has concluded that States should list waters not meeting water quality standards, including marine pH WQC, on their 2012 303(d) lists, and should also solicit existing and readily available information on OA using the current 303(d) listing program framework. This Memorandum does not elevate in priority the assessment and listing of waters for OA, but simply recognizes that waters should be listed for OA when data are available. EPA recognizes that information is absent or limited for OA parameters and impacts at this point in time and, therefore, listings for OA may be absent or limited in many States.

EPA will provide additional 303(d) guidance to the States when future OA research efforts provide the basis for improved monitoring and assessment methods, including approaches being developed under two significant Federal efforts (NOC and IWG-OA, described above) that will begin in early 2011. This future OA guidance may be in the form of stand-alone OA IR guidance, or as part of EPA's routine, biennial IR update. EPA also encourages States to focus their efforts on OA-vulnerable waters (e.g., waters with coral reefs, marine fisheries, shellfish

resources) that already are listed for other pollutants (e.g., nutrients) in order to promote ecological restoration.

V. Closing Information

Thank you for your continued hard work and dedication working with our States to develop Integrated Reports. This Memorandum and Attachment are consistent with previous IR guidance, and the current statutory framework under CWA Sections 303(d), 305(b), and 314. They are not regulations, do not impose legally binding requirements on EPA or the States, and do not require States to develop any new 303(d) program related to OA. If you have any questions or comments concerning this Memorandum, please contact me or have your staff contact John Goodin at 202-566-1373 (goodin.john@epa.gov) or Christine Ruf at 202-566-1220 (ruf.christine@epa.gov) in the Office of Wetlands, Oceans and Watersheds.

Attachment

cc: US EPA Regional Section 303(d) Coordinators
US EPA Regional Monitoring Coordinators
Brian McLean, Director, Office of Atmospheric Programs, OAR
Alexandra Dunn, ASIWPCA

ATTACHMENT: INFORMATION CONCERNING 2012 CLEAN WATER ACT SECTIONS 303(d), 305(b), AND 314 INTEGRATED REPORTING AND LISTING DECISIONS RELATED TO OCEAN ACIDIFICATION

This Attachment describes how States can move forward to address ocean acidification (OA) during the 2012 listing cycle using the current 303(d) Integrated Reporting (IR) framework. EPA reaffirms that States must list waters not meeting water quality standards where data and assessment methods are available, including marine pH, but recognizes that information is absent or limited for OA parameters and impacts at this point in time in many States. EPA will provide additional 303(d) guidance to the States when future OA research efforts provide the basis for improved monitoring and assessment methods, including approaches being developed under significant Federal efforts that will begin in early 2011. This future OA guidance may be in the form of stand-alone OA IR guidance, or as part of EPA's routine, biennial IR update. The information in this Attachment is consistent with previous IR Guidance, the current statutory and regulatory framework under CWA Sections 303(d), 305(b), and 314, and implementing regulations at 40 CFR 130.7, 130.2, and 130.8. This Attachment is not a regulation, does not impose legally binding requirements on EPA or the States, and does not require States to develop any new 303(d) program related to OA.

EPA recommends that States address OA during the 2012 303(d) listing cycle by using key components from the existing IR Guidance, described below.

1. Data Solicitation Related to Ocean Acidification

EPA recommends that States with marine waters include as part of their routine IR data request, a provision that solicits existing and readily available water quality-related data and information, including modeling and other non-site-specific data, for marine pH and natural background conditions (see below). Scientific guidance documents on methods for monitoring OA have been published over the last five years. States should refer to NRC's 2010 Report on OA, which provides technical and scientific information on these methods. In addition, States should consider requesting data and information on other OA-related parameters recommended by the NRC, including measurements of temperature, salinity, oxygen, nutrients critical to primary production, and at least two of the following four carbon parameters: dissolved inorganic carbon (DIC), partial pressure of carbon dioxide ($p\text{CO}_2$), total alkalinity (TA), and pH (NRC 2010). Several coastal States currently are monitoring for some of these recommended parameters even in the absence of associated water quality criteria (WQC).

EPA also recommends States specifically solicit existing and readily available biological data that could be used to make OA attainment decisions based on narrative or numeric biocriteria, including biological information related to resources that are particularly vulnerable to OA, such as waters with coral reefs (see section 4, below), marine fisheries, or shellfish resources. EPA acknowledges that existing and readily available chemical and biological data and information may be limited to fully assess coastal waterbody impairment due to OA, but the Agency expects additional data and information will become available in the future. States should refer to Section IV of EPA's 2006 IR Guidance, "Issues Concerning the Development and Use of an Assessment Methodology" (US EPA 2005), for specific recommendations regarding overall data

solicitation and development of assessment methodologies to support State 303(d) attainment decisions.

Listed below are some monitoring programs that include data that may be useful to States as they assess coastal waters for marine pH impairment:

- A. NOAA- National Estuarine Research Reserve System (NERRS): Website contains real-time and archived weather and water data. States can use the Google Map feature to locate stations within their waters. To view what type of data the station collects click on the station marker. Majority of the stations collect pH data.
<http://cdmo.baruch.sc.edu/QueryPages/googlemap.cfm>
- B. NOAA National Data Buoy Center: Website contains data from all active NOAA and other registered buoys. EPA recommends States use this website's Google Map feature to locate buoys in their coastal waters and check for stations that monitor pH (also includes NERRS stations).
<http://www.ndbc.noaa.gov/>
- C. Chesapeake Bay Interpretive Buoy System (CBIBS): Website contains weather and water data from sampling stations in Chesapeake Bay. Gooses Reef Buoy records pH data.
<http://www.buoybay.org/site/public/>

2. Assessment Related to Ocean Acidification

EPA encourages coastal States to start developing assessment methods for evaluating marine waters based on OA impacts using their existing marine pH and biological (narrative and numeric) WQC. EPA reaffirms that States must list waters not meeting water quality standards, including marine pH, based on existing and readily available water quality-related data and information. Consistent with existing IR guidance, EPA also supports the use of predictive modeling and other non-site-specific data such as remote sensing data, land use analysis, and knowledge about pollutant sources and loadings, to make assessment decisions (2006 IR Guidance, Section IV, part C [US EPA 2005]). Several coastal States specifically include a provision in their IR for modeling to be used for listing purposes for all pollutants, although most States do not include this as part of their assessment methodologies. Some States have listed waters based on statewide advisories, or the presumption that the pollutant source (particularly atmospheric deposition, such as mercury) is uniformly affecting segments in large geographic areas. EPA supports the use of these methods for making attainment decisions related to OA where appropriate.

Described below are several programs and articles that currently have useful information and data on OA. EPA recommends States explore these sources to aid in developing strategies for assessing OA impacts.

- A. Ocean Carbon and Biogeochemistry (OCB) Program, <http://www.whoi.edu/OCB-OA/>: This website provides a clearinghouse of OA news, information, and data resources to

support the scientific research community. EPA recommends that States review these websites and documents, especially the “Research Aids” section, to locate relevant information and monitoring projects that can be used to support OA assessment.

Below are some key sections and documents found within OCB’s website:

- i. “Ocean Acidification - Recommended Strategy for a U.S. National Research Program” (OCB 2009a): The Whitepaper includes a list of additional sources, reports and reviews on OA.
http://www.us-ocb.org/publications/OCB_OA_Whitepaper.pdf
 - ii. “Response to the EPA’s call for Notice of Data Availability (NODA) on Ocean Acidification and Marine pH Water Quality Criteria” (OCB 2009b):
<http://www.whoi.edu/fileservlet.do?id=62903&pt=2&p=73670>
 - iii. “Response to the EPA’s call for public comment on ocean acidification and the 303(d) program” (OCB 2010):
<http://www.whoi.edu/fileservlet.do?id=62903&pt=2&p=73670>
 - iv. “Research Projects” section under “Research Aids”: Includes list of programs and projects that monitor ocean chemistry, explore OA effects on marine ecosystems, and develop ocean chemistry models.
<http://www.whoi.edu/OCB-OA/page.do?pid=32492>
 - v. “Data Tools and Resources” section under “Research Aids”: Includes links to ocean carbon data, coral reef data, time-series and moorings data from Ocean Sites and the Carbon Dioxide Information Analysis Center (CDIAC), satellite data, and ocean carbon modeling information.
<http://www.whoi.edu/OCB-OA/page.do?pid=32493>
- B. NOAA-Pacific Marine Environmental Laboratory (PMEL) Carbon Dioxide Program, <http://www.pmel.noaa.gov/co2/>: Conducts ocean carbon cycle research from ships and moorings in all of the major ocean basins in collaboration with the Atlantic Oceanographic and Meteorological Laboratory (AOML) CO₂ Program and the US Climate Variability and Predictability (CLIVAR) CO₂ Repeat Hydrography Program. PMEL monitoring programs include:
- i. Air-Sea CO₂ Exchange: Collects fugacity of carbon dioxide (fCO₂) in air and seawater, sea surface temperature (SST), and salinity data
 - ii. CO₂ Time Series: Collects pCO₂ in air and seawater, and SST
 - iii. Global Inventory Changes: Includes inorganic carbon measurements
- C. NOAA-PMEL Station Papa: Monitors ocean-atmosphere interactions, carbon uptake, and OA. <http://www.pmel.noaa.gov/stnP/index.html>

- D. Integrated Ocean Observing System (IOOS):
Includes a data catalog where you can search by parameter, date, program, and data providers. Note: Internet Explorer is slow to display the data catalog. Firefox, Safari, and Chrome browsers work well. <http://www.ioos.gov/>
- E. Publications by Fabry et al. (2008), Feely et al. (2009), and Riebesell et al. (2010) identify vulnerable ecosystems, measurement requirements, and other details for developing an OA observational network (e.g., planned or deployed open-ocean and coastal OA monitoring sites).

Natural Condition

As discussed previously, currently all 23 coastal States and five Territories have marine pH WQC in place, and more than half of States' criteria contain a natural condition provision (e.g., "pH can range between 6.5 to 8.5, but not varying more than 0.2 units outside of the normally occurring range.") However, most coastal States do not have detailed monitoring protocols, assessment methods, or high-resolution equipment needed to quantify natural conditions within their coastal waters, which is needed to implement such criteria. This absence is due to the fact that marine pH concentrations can vary by depth, time of day, season, and location, making it difficult to monitor accurately. Additionally, historical pH datasets typically lack the necessary detail needed for States to establish accurate baselines. While most States are not determining natural condition for marine pH, a few States do address natural conditions in their assessment methodologies (e.g., modeling can be used to determine natural background). In addition, researchers are developing approaches to estimate historic marine pH values to draw conclusions concerning OA impacts. For example, Feely et al. (2010) uses a CO2SYS computer program developed by Lewis and Wallace (1998) to estimate pre-industrial pH and current pH from measured TA and DIC values. Therefore, to improve implementation of the marine pH criteria, EPA suggests States begin requesting information on, and developing methods for, interpreting their marine pH water quality standards related to natural condition.

Other 303(d)-Related Information

Consistent with EPA's 303(d) regulations and previous IR Guidance, EPA recommends that States include in their IR methodology a description of how they consider available OA data and information for assessment decisions, including statistical approaches and the QA/QC criteria used to evaluate such data and information. Also, EPA reminds States that if a designated use is not supported and the segment is impaired or threatened, the fact that the specific pollutant is not known does not provide a basis for excluding the segment from being listed as impaired. Therefore, if marine pH exceeds the State's criterion, but the source-stressor is unknown (e.g., carbon deposition, nutrient enrichment, industrial discharge, natural background), then EPA expects the segment to be listed. In addition, to promote the identification of the pollutant(s) causing the impairment, EPA recommends that States include other information that could contribute to identifying the specific pollutant.

EPA also recommends that States consider using IR Category 3 for segments where there is insufficient available data and/or information to make a determination related to OA. It is possible that States have information from other sources regarding OA impacts and could then identify those segments that are higher and lower priority for follow-up monitoring in the future, using predicative tools such as probability surveys or landscape models. Category 3 provides

States with the flexibility to monitor these segments in a manner consistent with their overall monitoring strategy and schedule. (See page 5-6 of EPA's 2010 IR guidance [2009a] for more detail on Category 3).

Separate IR section for Marine Water Segments

EPA recommends that States consider including a separate assessment and listing section in their IR report for information related to marine water segments (e.g., coastal waters, estuaries) and all parameters separate from their freshwater segments, where practical. For example, Puerto Rico in their 2010 Integrated Report has separate sections for their segmentation criteria and assessment units of inland waters (rivers, streams, lakes, and estuaries) and coastal shoreline. Location and size of segments are documented in separate tables. In addition, Puerto Rico separates the listing of impaired waters into the following five tables: 1) rivers and streams, 2) estuaries, 3) lagoons, 4) lakes, and 5) coastal shoreline. This separate marine/coastal section may make it easier for States and the public to evaluate, review, and update methods and data related to marine impairments, including OA.

3. Future Federal Efforts Related to Ocean Acidification

States are encouraged to track two key Federal efforts that should help them in developing monitoring and assessment methods and protocols for use in developing future 303(d) lists. First, on July 19, 2010, President Obama issued Executive Order (EO) 13547 that establishes the Nation's first comprehensive National Ocean Policy for the stewardship of the ocean, our coasts, and the Great Lakes (Obama 2010). The EO created an interagency National Ocean Council (NOC) with the intent to strengthen ocean governance and provide sustained, high-level focus on the national priority action objectives to advance the National Policy (available at <http://www.whitehouse.gov/administration/eop/oceans>). The NOC is charged with developing Strategy Action Plans for nine priority objectives, including "Climate Change Adaptation and Ocean Acidification". Upon approval by the NOC, these 2011 action plans will guide Federal government-wide implementation of ocean policy-related activities and budgets, including development of a flexible framework for effective coastal and marine spatial monitoring and planning.

Second, the FOARAM Act of 2009 directed the Joint Subcommittee on Science and Technology (JSOST) to create an Interagency Working Group on Ocean Acidification (IWG-OA) to coordinate OA activities across Federal agencies. This Interagency Committee, in which EPA participates, is responsible for organizing and expanding research programs with the following goals: to enhance understanding of the role of OA on marine ecosystems, identify marine ecosystem conservation measures, facilitate information exchange on OA methods, and investigate the socioeconomic impacts of OA. The IWG-OA is drafting a strategic research plan for OA, to be completed in 2011. An initial report on the plan's progress, including a summary of existing Federally-funded OA research and monitoring activities, including their budgets, was recently completed (IWG-OA 2010).

4. Biological Assessment, including Coral Reefs, Related to Ocean Acidification

EPA's current policy is that States should designate aquatic life uses for their waters that appropriately address biological integrity and adopt biological criteria necessary to protect those uses (US EPA 1991). To date, about half of the States now have narrative biological criteria and a handful of States have numeric biological criteria in their water quality standards. Nearly one-third of all States have written procedures describing how to use biological information to help make aquatic life use attainment decisions (Russo 2009), but the majority of these measures and methods apply to freshwater, not marine, systems. Species-specific assessments of biological responses to chemical changes representative of OA have been performed (OCB 2009b), but the NRC (2010) concluded that standardized, appropriate parameters for monitoring the biological effects of OA generally cannot be determined until more is known concerning the physiological responses and population consequences of OA across a wide range of taxa. However, where more detailed information on specific aquatic resources (e.g., coral reefs, marine fisheries, or shellfish resources) does exist, EPA encourages States to consider developing bioassessment methods and/or biocriteria to reflect OA impacts.

EPA has detailed information on developing biocriteria and assessment methods at the following website:

http://water.epa.gov/scitech/swguidance/waterquality/standards/criteria/aqlife/biocriteria/biocriteria_index.cfm and within the documents, "Estuarine and Coastal Marine Waters: Bioassessment and Biocriteria Technical Guidance" (US EPA 2000) and "Stony Coral Rapid Bioassessment Protocol" (US EPA 2007). Additionally, States are referred to EPA's recent publication, "Coral Reef Biological Criteria: Using the Clean Water Act to Protect a National Treasure" (US EPA 2010d) for detailed information on different planning, assessment, and management steps necessary for the development of coral reef biocriteria. Also, EPA's website for Biological Indicators of Watershed Health includes more documents that States can use to assist in developing bioassessments (<http://www.epa.gov/bioiweb1/>)

One data source that States can use to help them prioritize where to monitor and assess in the future for OA impacts is EPA's National Coastal Condition Reports (NCCR) (<http://water.epa.gov/type/oceb/assessmonitor/nccr/index.cfm>). These Reports assess the Nation's coastal condition by evaluating five indicators of condition (water quality, sediment quality, benthic community condition, coastal habitat loss, and fish tissue contaminants) in each region of the U.S. (Northeast Coast, Southeast Coast, Gulf Coast, West Coast, Great Lakes, Alaska, Hawaii, and Puerto Rico). Although these reports typically cannot be used to make site-specific 303(d) listing decisions, they can be useful to States in identifying which coastal waters have poor conditions, and therefore help States prioritize locations for future monitoring efforts related to OA impacts. The most current NCCR Report was published in 2008 (US EPA 2008b) and EPA is expecting to publish the next updated NCCR Report in late 2012.

Listed below are other resources that may be of use to States in their efforts to develop bioassessments related to OA impacts:

- A. Kleypas et al. (2006), "Impacts of Ocean Acidification on Coral Reefs and Other Marine Calcifiers: A Guide for Future Research": This Workshop paper summarizes existing

knowledge on OA impacts of marine calcifiers, presents a consensus on what the most pressing scientific issues are, and identifies future research strategies for addressing these issues. The report is intended to guide program managers and researchers toward designing research projects with the details and references needed to address the major scientific issues that should be pursued in the next 5-10 years.

- B. Fabry et al. (2008), “Present and Future Impacts of Ocean Acidification on Marine Ecosystems and Biogeochemical Cycles”: This Workshop report summarizes information from nearly 100 scientists and presents a comprehensive research strategy for four critical ecosystems affected by OA: warm-water coral reefs, coastal margins, subtropical/tropical pelagic regions, and high latitude regions.
- C. Buddemeier et al. (2008), Coral Mortality and Bleaching Output (COMBO) Model¹²: Projects CO₂ and high temperature bleaching event impacts to coral reefs. Developers used coral reefs in Hawaii and US Virgin Islands to test importance of stressors and priority areas for conservation.
- D. Bradley et al. (2009), “Development and Implementation of Coral Reef Biocriteria in U.S. Jurisdictions”: This article references different coral reef monitoring programs within U.S. coastal waters.
- E. NOAA National Environmental Satellite, Data and Information Service (NESDIS)/ Coral Reef Watch (CRW): Experimental Ocean Acidification Product Suite (OAPS) that provides a synthesis of satellite and modeled environmental datasets to provide a synoptic estimate of sea surface carbonate chemistry in the Greater Caribbean Region (includes coastal waters along FL and PR). <http://coralreefwatch.noaa.gov/satellite/oa/index.html>

5. Prioritization and TMDL Schedule Related to Ocean Acidification

States that list coastal waters for marine pH and other OA-related impairments have the discretion to prioritize their TMDL development schedule. CWA Section 303(d) and implementing regulations at 40 C.F.R. §130.7 do not specify a timeframe for States to develop TMDLs. However, EPA’s current policy is that States can choose to rank the development of TMDLs for listed waters in line with advancing technical and scientific methods, and generally have between 8 to 13 years to develop TMDLs. Currently, EPA believes that not enough information is available to develop OA-related carbon TMDLs, and is deferring development of TMDL guidance related to OA listings until more information becomes available in the future. States may want to take this information into account in setting the priority ranking for TMDL development for any waters identified due to OA. However, States could address OA impacts immediately by evaluating marine waters that are currently listed for other pollutants and that are considered vulnerable to OA (e.g., waters with coral reefs, marine fisheries, shellfish resources). For example, researchers have demonstrated that nutrient enrichment can also lead to decreases in marine pH due to natural respiration processes and remineralizing dead organic matter back to CO₂ (Feely et al. 2010). States could focus their efforts on these OA-vulnerable waters to promote ecological restoration.

REFERENCES

- Bradley, P.; Fisher, W.S.; Bell, H.; Davis, W.; Chan, V.; LoBue, C.; Wiltse, W. (2009) Development and Implementation of Coral Reef Biocriteria in U.S. Jurisdictions. *Environ Monit Assess*, 150, 43-51.
- Buddemeier, R.W.; Jokiel, P.L.; Zimmerman, K.M.; Lane, D.R.; Carey, J.M.; Bohling, G.C.; Martinich, J.A. (2008) A Modeling Tool to Evaluate Regional Coral Reef Responses to Changes in Climate and Ocean Chemistry. *Limnol. Oceanogr.: Methods*, 6, 395-411.
- Caldeira, K.; Wickett M.E. (2003) Anthropogenic Carbon and Ocean pH. *Nature*, 425, 365.
- Cooper, T.F.; De'ath G.; Fabricius, K.E.; Lough, J.M. (2008) Declining Coral Calcification in Massive *Porites* in Two Nearshore Regions of the Northern Great Barrier Reef. *Global Change Biology*, 14, 529-538.
- Fabry, V.J.; Langdon, C.; Balch, W.M.; Dickson, A.G.; Feely, R.A.; Hales, B.; Hutchins, D.A.; Kleypas, J.A.; Sabine, C.L. (2008) *Present and Future Impacts of Ocean Acidification on Marine Ecosystems and Biogeochemical Cycles*. Report of the Ocean Carbon and Biogeochemistry Scoping Workshop on Ocean Acidification Research held 9-11 Oct 2007, La Jolla, California, XX pp.
- Feely, R.A.; Sabine, C.L.; Takahashi, T.; Wanninkhof, R. (2001): Uptake and Storage of Carbon Dioxide in the Oceans: The Global CO₂ Survey. *Oceanography*, 14(4), 18-32.
- Feely, R.A.; Sabine, C.L.; Lee, K.; Berelson, W.; Kleypas, J.; Fabry, V.J.; Millero, F.J. (2004) Impact of Anthropogenic CO₂ on the CaCO₃ System in the Oceans. *Science*, 305, 362-366.
- Feely R.A.; Sabine, C.L.; Hernandez-Ayon, J.M.; Ianson, D.; Hales, B. (2008) Evidence for Upwelling of Corrosive "Acidified" Water onto the Continental Shelf. *Science*, 320, 1490-1492.
- Feely, R.A.; Fabry, V.J.; Dickson, A.G.; Gattuso, J-P.; Bijma, J.; Riebesell, U.; Doney, S.; Turley, C.; Saino, T.; Lee, K.; Anthony, K.; Kleypas, J. (2009) An International Observational Network for Ocean Acidification. *Proceedings of the "OceanObs '09: Sustained Ocean Observations and Information for Society" Conference (Vol. 2)*, Venice, Italy, Sep 21-25; Hall, J., D.E. Harrison, and D. Stammer, Eds., ESA Publication, WPP-306. [in press].
- Feely, R.A.; Alin, S.R.; Newton, J.; Sabine, C.L.; Warner, M.; Devol, A.; Krembs, C.; Maloy, C. (2010) The Combined Effects of Ocean Acidification, Mixing, and Respiration on pH and Carbonate Saturation in an Urbanized Estuary. *Estuarine, Coastal and Shelf Science*, 88, 442-449.

- Federal Ocean Acidification Research and Monitoring (FOARAM) Act of 2009 (2009) Pub. L. 111-11. 123 Stat. 1436-1442, March 30, 2009. Available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ011.111.pdf.
- Hendriks, I.E, Duarte, C.M.; Alvarez, M. (2010) Vulnerability of Marine Biodiversity to Ocean Acidification: A Meta-Analysis. *Estuarine, Coastal and Shelf Science*, 86, 157–164.
- Hoegh-Guldberg, O. et al. (2007) Coral reefs under rapid climate change and ocean acidification. *Science*, 318, 14.
- Interagency Working Group on Ocean Acidification (IWG-OA) (2010) *Initial Report on Federally Funded Ocean Acidification Research and Monitoring Activities and Progress in Developing a Strategic Plan*.
- Kleypas, J.A.; Feely, R.A.; Fabry, B.J.; Langdon, C.; Sabine, C.L.; Robbins, L.L. (2006) *Impacts of Ocean Acidification on Coral reefs and Other Marine Calcifiers: A Guide for Future Research*. Report of a workshop held 1-20 Apr 2005, St. Petersburg, Florida, 88 pp.
- Lewis, E.; Wallace, D.W.R. (1998) Program Developed for CO₂ System Calculations; ORNL/CDIAC-105; Carbon Dioxide Information Analysis Center, Oak Ridge National Laboratory, U.S. Department of Energy, Oak Ridge, Tennessee.
- National Oceanic and Atmospheric Administration (NOAA) (2008) *State of the Science: Ocean Acidification*. Available at: http://www.pmel.noaa.gov/co2/OA/Ocean_Acidification%20FINAL.pdf.
- National Research Council (NRC) (2010) Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean. *National Academies Press*, ISBN: 978-0-309-15359-1. Available at: http://www.nap.edu/catalog.php?record_id=12904.
- Obama, B. (2010) Executive Order 13547 of July 19, 2010 Stewardship of the Ocean, Our Coasts, and the Great Lakes. *Federal Register*, 75(140), 43023-43027. Available at: <http://edocket.access.gpo.gov/2010/pdf/2010-18169.pdf>.
- Ocean, Carbon, and Biogeochemistry (OCB) (2009a) *Ocean Acidification-Recommended Strategy for a U.S. National Research Program*. Available at: http://www.us-ocb.org/publications/OCB_OA_Whitepaper.pdf.
- Ocean, Carbon, and Biogeochemistry (2009b) *Response to the EPA's Call for Notice of Data Availability (NODA) on Ocean Acidification and Marine pH Water Quality Criteria*. Available at: http://www.us-ocb.org/publications/EPA_OCB_FINAL.pdf.
- Ocean, Carbon, and Biogeochemistry Program (2010). *Response to the EPA's Call for Public Comment on Ocean Acidification and the 303(d) Program*. Available at: <http://www.whoi.edu/fileserv.do?id=62903&pt=2&p=73670>.

- Ridgwell, A.; Schmidt, D.N. (2010) Past Constraints on the Vulnerability of Marine Calcifiers to Massive Carbon dioxide Release. *Nature Geoscience*, 3, 196-200. doi:10.1038/ngeo755.
- Riebesell, U.; Fabry, V.J.; Hansson, L.; Gattuso, J-P. (2010) *Guide to Best Practices in Ocean Acidification Research and Data Reporting*. Office for Official Publications of the European Communities, Luxembourg, 264 pp.
- Russo, Gary, AAAS Fellow (2009) *White paper on Evaluation of Biological Criteria in Water Quality Standards*.
- Sabine, C.; Feely, R.A.; Gruber, N.; Key, R.M.; Lee, K.; Bullister, J.L.; Wanninkhof, R.; Wong, C.S.; Wallace, D.W.R.; Tilbrook, B.; Millero, F.J.; Peng, T.H.; Kozyr, A.; Ono, T.; Rios, A.T. (2004) The oceanic sink for anthropogenic CO₂. *Science*, 305, 367–371.
- US EPA (1991) *Transmittal of Final Policy on Biological Assessments and Criteria*. Memorandum from Tudor Davies, Director of the EPA Office of Science and Technology to Water Management Division Directors Regions I – X.
- US EPA (2000) *Estuarine and Coastal Marine Waters: Bioassessment and Biocriteria Technical Guidance*; EPA-822-B-00-024; Washington, D.C. Available at: <http://water.epa.gov/scitech/swguidance/waterquality/standards/criteria/aqlife/biocriteria/estuaries1.cfm>.
- US EPA (2003a) *Elements of a State Water Monitoring and Assessment Program*; EPA 841-B-03-003; Washington, D.C. Available at: <http://water.epa.gov/type/watersheds/monitoring/index.cfm>.
- US EPA (2003b) *Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act*; Washington, D.C. Available at: <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/guidance.cfm>.
- US EPA (2005) *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act*; Washington, D.C. Available at: <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/guidance.cfm>.
- US EPA (2006) *Information Concerning 2008 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*; Washington, D.C. Available at: <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/guidance.cfm>.
- US EPA (2007) *Stony Coral Rapid Bioassessment Protocol*; EPA/600/R-06/167; Gulf Breeze, Florida. Available at: <http://www.epa.gov/bioiweb1/pdf/EPA-600-R-06-167StonyCoralRBP.pdf>.

- US EPA (2008a) *National Water Program Strategy: Response to Climate Change*; EPA 800-R-08-001; Washington, D.C. Available at:
<http://water.epa.gov/scitech/climatechange/strategy.cfm>.
- US EPA (2008b) *National Coastal Condition Report III*; EPA/842-R-08-002; Washington, D.C. Available at: www.epa.gov/owow/oceans/cccr/.
- US EPA (2009a) *Information Concerning 2010 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*; Washington, D.C. Available at:
<http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/guidance.cfm>.
- US EPA (2009b) *Technical Support Document for Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act*; Washington, D.C. Available at:
<http://www.epa.gov/climatechange/endangerment/downloads/Endangerment%20TSD.pdf>
- US EPA (2009c) Notice of data availability (NODA) on Ocean acidification and Marine pH Water Quality Criteria. *Federal Register*, 74(71), 17484-17487. Available at:
<http://www.epa.gov/fedrgstr/EPA-WATER/2009/April/Day-15/w8638.htm>.
- US EPA (2010a) Clean Water Act Section 303(d): Notice of Call for Public Comment on 303(d) Program and Ocean Acidification. *Federal Register*, 75(54), 13537-13540. Available at:
<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480ac472a>.
- US EPA (2010b) *EPA Decision on Re-evaluation and/or Revision of the Water Quality Criterion for Marine pH for the Protection of Aquatic Life*. Memorandum from Pete Silva, Assistant Administrator, Office of Water to Center for Biological Diversity, San Francisco, California, April 15, 2010.
- US EPA (2010c) Testimony of Nancy Stoner, Deputy Assistant Administrator, Office of Water, before the Subcommittees on Oversight, and on Water and Wildlife, Committee on Environment and Public Works, U.S. Senate, May 11, 2010.
- US EPA (2010d) *Coral Reef Biological Criteria: Using the Clean Water Act to Protect a National Treasure*; EPA/600/R-10/054; Washington, D.C. Available at:
http://www.epa.gov/bioiweb1/coral/coral_biocriteria.html.
- Wootton, J.T.; Pfister, C.A.; Forester J.D. (2008) Dynamic patterns and ecological impacts of declining ocean pH in a high-resolution multi-year dataset. *Proceedings of the National Academy of Sciences*, 105(48), 18848–18853.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**SIERRA CLUB and WEST
VIRGINIA HIGHLANDS
CONSERVANCY, INC.,**

Plaintiffs,

v.

CIVIL ACTION NO. _____

FOLA COAL COMPANY, LLC,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND FOR CIVIL PENALTIES**

INTRODUCTION

1. This is a citizen suit for declaratory and injunctive relief and civil penalties against Defendant Fola Coal Company, LLC (“Fola”) for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (hereinafter “the Clean Water Act” or “the CWA”), and the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 et seq. (hereinafter “SMCRA”) at its Surface Mine No. 3 in Clay and Nicholas Counties, West Virginia.

2. As detailed below, Plaintiffs allege that Fola has discharged and continues to discharge pollutants into waters of the United States in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and of the conditions and limitations of its West Virginia/National Pollution Discharge Elimination System (“WV/NPDES”) Permit WV1014005 issued pursuant to Section 402 of the Clean Water Act.

3. Plaintiffs further allege that Fola’s discharges of unlawful quantities of pollutants into the waters adjacent to its Surface Mine No. 3 violate the performance standards under SMCRA and the terms and conditions of its surface mining permit.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal

question), 33 U.S.C. § 1365 (CWA citizens' suit provision), and 30 U.S.C. § 1270 (SMCRA citizens' suit provision).

5. On May 24, 2010, Plaintiffs gave notice of the violations and its intent to file suit to the Defendant, the United States Environmental Protection Agency ("EPA"), the Office of Surface Mining, Reclamation, and Enforcement ("OSMRE"), and the West Virginia Department of Environmental Protection ("WVDEP"), as required by Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and Section 520(b)(1)(A) of SMCRA, 30 U.S.C. § 1270(b)(1)(A).

6. More than sixty days have passed since notice was served. EPA, OSMRE and/or WVDEP have not commenced or diligently prosecuted a civil or criminal action to redress the violations. Moreover, neither EPA nor WVDEP commenced an administrative penalty action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or a comparable state law to redress the violations prior to the issuance of the May 24, 2010 notice letter.

7. Venue in this District is proper pursuant to 33 U.S.C. § 1365(c)(1) because the source of the Clean Water Act violations are located in this District, and pursuant to 30 U.S.C. § 1270(c) because the coal mining operations complained of are located in this District.

PARTIES

8. Fola is a West Virginia Limited Liability Company engaged in the business of mining coal.

9. Fola is a person within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and Section 701(19) of SMCRA, 30 U.S.C. § 1291(19).

10. At all relevant times, Fola has owned and operated Surface Mine No. 3 in Clay and Nicholas Counties, West Virginia, which is regulated by Surface Mining Permit S200995 and which discharges pollutants into Twentymile Creek and its tributaries, including Boardtree Branch, subject to the effluent limitations of WV/NPDES Permit WV1014005.

11. Plaintiff West Virginia Highlands Conservancy, Inc., (hereinafter “WVHC”) is a nonprofit organization incorporated in West Virginia. It has approximately 2,000 members. It works for the conservation and wise management of West Virginia’s natural resources.

12. Plaintiff The Sierra Club is a nonprofit corporation incorporated in California, with more than 600,000 members and supporters nationwide and approximately 1,900 members who reside in West Virginia and belong to its West Virginia Chapter. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth’s resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club’s concerns encompass the exploration, enjoyment and protection of surface waters in West Virginia.

13. Plaintiffs have members who use, enjoy, and benefit from the water quality in Twentymile Creek and its tributaries, including Boardtree Branch, and the natural resources associated with those streams. They would like to recreate in areas downstream from the portion of the stream into which Fola’s Surface Mine No. 3 discharges pollutants harmful to aquatic life, including total suspended solids, conductivity and sulfate. Excessive amounts of these pollutants degrade the water quality of the Twentymile Creek and its tributaries, make the water aesthetically unpleasant and environmentally undesirable, and impair its suitability for aquatic life. Because of this pollution, Plaintiffs’ members refrain from and/or restrict their usage of Twentymile Creek, its tributaries, and its associated natural resources. As a result, the environmental, health, aesthetic, and recreational interests of these members are adversely affected by Fola’s excessive discharges of these other pollutants into Twentymile Creek and its tributaries from its Surface Mine No. 3 in violation of its NPDES and SMCRA permits. If Fola’s unlawful discharges ceased, the harm to the interests of Plaintiffs’ members could be redressed.

Injunctions and/or civil penalties would redress Plaintiffs' members' injuries by preventing and/or deterring future violations of the limits in Fola's permits.

14. At all relevant times, Plaintiffs were and are "persons" as that term is defined by the CWA, 33 U.S.C. § 1362(5), and SMCRA, 30 U.S.C. § 1291(19).

STATUTORY AND REGULATORY FRAMEWORK

15. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" into waters of the United States except in compliance with the terms of a permit, such as a National Pollution Discharge Elimination System ("NPDES") Permit issued by the EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the permit issuing authority may issue a NPDES Permit that authorizes the discharge of any pollutant directly into waters of the United States, upon the condition that such discharge will meet all applicable requirements of the CWA and such other conditions as the permitting authority determines necessary to carry out the provisions of the CWA.

17. Section 303(a) of the CWA, 33 U.S.C. § 1313(a), requires that states adopt ambient water quality standards and establish water quality criteria for particular water bodies that will protect the designated uses of the water.

18. The Administrator of EPA authorized WVDEP, pursuant to Section 402(a)(2) of the Act, 33 U.S.C. § 1342(a)(2), to issue NPDES permits on May 10, 1982. 47 Fed. Reg. 22363. The applicable West Virginia law for issuing NPDES permits is the Water Pollution Control Act ("WPCA"), W.V. Code § 22-11-1, et seq.

19. Section 505(a) of the CWA, 33 U.S.C. § 1365(a), authorizes any "citizen" to "commence a civil action on his own behalf . . . against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter."

20. Section 505(f) of the CWA, 33 U.S.C. § 1365(f), defines an “effluent standard or limitation under this chapter,” for purposes of the citizen suit provision in Section 505(a) of the CWA, 33 U.S.C. § 1365(a), to mean, among other things, an unlawful act under Section 301(a), 33 U.S.C. § 1311(a), of the CWA and “a permit or condition thereof issued” under Section 402, 33 U.S.C. § 1342, of the CWA.

21. In an action brought under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), the district court has jurisdiction to order the defendant or defendants to comply with the CWA and to assess civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1365(d).

22. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to \$25,000 per day for each violation.

23. Pursuant to the Federal Civil Penalties Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the court may assess a civil penalty of \$37,500 per day for each violation that occurred after January 12, 2009. See 40 C.F.R. § 19.4.

24. Under Section 505(d) of the CWA, 33 U.S.C. § 1365(d), the court “may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such an award is appropriate.”

25. Section 506 of SMCRA, 30 U.S.C. § 1256, prohibits any person from engaging in or carrying out surface coal mining operations without first obtaining a permit from the Office of Surface Mining Reclamation and Enforcement (“OSMRE”) or from an approved state regulatory authority.

26. At all relevant times, the State of West Virginia has administered an approved

surface mining regulatory program under SMCRA. See 30 C.F.R. § 948.10.

27. Among the performance standards mandated by SMCRA and the West Virginia Surface Coal Mining and Reclamation Act (“WVSCMRA”) is that “[d]ischarge from areas disturbed by . . . mining shall not violate effluent limitations or cause a violation of applicable water quality standards.” 30 C.F.R. §§ 816.42 and 817.42; 38 C.S.R. § 2-14.5.b.

28. The legislative rules promulgated under the WVSCMRA provide that, as a general condition of all surface mining permits issued under the WVSCMRA, the permittee must comply with all applicable performance standards. 38 C.S.R. § 2-3.33.c.

29. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), authorizes any person adversely affected to bring an action in federal court to compel compliance with SMCRA against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to [SMCRA].”

30. Section 520(d) of SMCRA, 30 U.S.C. § 1270(d), authorizes the Court to award the costs of litigation, including attorney fees and expert witness fees, “to any party, whenever the court determines such an award is appropriate.”

31. WVDEP is the agency in the State of West Virginia that administers that State’s CWA and SMCRA programs, and issues WV/NPDES Permits and WVSCMRA Permits.

FACTS

32. On May 13, 1996, WVDEP issued West Virginia Surface Mining Permit S200995 to Fola for its 1619.36-acre Surface Mine No. 3 in Clay and Nicholas Counties, West Virginia. The permit was amended in 1999 and 2006 to add 35 acres and 87.7 acres, respectively, and renewed in 2001 and 2006, and is still in effect. Fola’s Surface Mine No. 3 is the predominant development activity in the Boardtree Branch watershed.

33. Fola built a large valley fill in that watershed which was projected in its mining

application to contain 83.3 million cubic yards of material and eliminate 2.16 acres of flowing stream in the watershed. Fola also built a sediment control pond in Boardtree Branch below this valley fill. That Pond 39 controls a 711-acre drainage area in the watershed.

34. Pursuant to EPA's 1982 delegation of authority and the WPCA, WVDEP issued WV/NPDES permit WV1014005 to Fola on June 11, 1996 to regulate water pollution from its Surface Mine No. 3. On May 26, 2006 and September 8, 2009, WVDEP renewed this WV/NPDES permit.

35. Outfall 24 of Fola's WV/NPDES Permit WV1014005 discharges from Pond 39 into Boardtree Branch at latitude/longitude 38° 19' 34", 81° 02' 40".

36. Part C of WV/NPDES Permit WV1014005 incorporates by reference 47 CSR § 30-5.1.f, which provides that: "The discharge or discharges covered by a WV/NPDES permit are to be of such quality so as not to cause violation of applicable water quality standards adopted by the Department of Environmental Protection, Title 47, Series 2."

37. WVDEP's narrative water quality standards prohibit discharges of "[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life" or that cause "significant adverse impacts to the chemical, physical, hydrologic, or biological components of aquatic ecosystems." 47 C.S.R. §§ 2-3.2.e & 2-3.2.i.

38. On March 19, 2007, the U.S. Environmental Protection Agency (EPA) performed a whole effluent toxicity (WET) test for ambient toxicity in Boardtree Branch at latitude/longitude 38° 19' 21.9", 81° 02' 38.7". That location is a short distance downstream from Outfall 24. The WET test showed that the water in that stream at that location was acutely and chronically toxic to aquatic life. The acute toxicity was 3.57 acute toxicity units (Tu_a), based on an LC50 of 28% survival, and the chronic toxicity was 6.67 chronic toxicity units (Tu_c), based on an IC25 of 14.8% reproduction. Both of these values exceed EPA's guidance criteria for

acute and chronic aquatic life protection, which are 0.3 Tu_a and 1.0 Tu_c , respectively.

39. In its March 2008 Gauley River TMDL Report, WVDEP classified Boardtree Branch as biologically impaired due to ionic stress. In that report, the West Virginia Stream Index Score (WVSCI) score for that branch is 57.02. WVDEP's August 12, 2010 "Justification and Background for Permitting Guidance for Surface Coal Mining Operations to Protect West Virginia's Narrative Water Quality Standards, 47 C.S.R. 2 §§ 3.2.e. and 3.2.i." (hereafter "WVDEP's Guidance"), states that "the current WVSCI score that indicates the integrity of a benthic macroinvertebrate community in West Virginia's wadeable streams is 68.0." In the 2008 Gauley River TMDL Report, WVDEP listed Fola's Surface Mine No. 3 as the only NPDES permittee discharging into Boardtree Branch.

40. EPA's WET test on March 19, 2007 measured 2582 $\mu\text{S}/\text{cm}$ for specific conductivity in the stream, which is a measure of ionic stress. In samples taken between July 2003 and June 2004, WVDEP measured the specific conductivity in Boardtree Branch in a range from a low of 2544 $\mu\text{S}/\text{cm}$ to a high of 3341 $\mu\text{S}/\text{cm}$. WVDEP's Guidance classifies specific conductivity as a "definite stressor" when it exceeds 1533 $\mu\text{S}/\text{cm}$.

41. On October 4, 2010, Plaintiffs' consultant measured 3680 $\mu\text{S}/\text{cm}$ for specific conductivity in Boardtree Branch approximately five meters up from its mouth and confluence with Twentymile Creek at the coordinates: 38.32225W, 81.04363N. On that same date, he also measured 2560 $\mu\text{S}/\text{cm}$ for specific conductivity on Twentymile Creek immediately downstream (approximately 10 meters) from its confluence with Boardtree Branch at the coordinates: 38.32206W, 81.0404374N.

42. In samples taken between July 2003 and June 2004, WVDEP measured the sulfate in Boardtree Branch in a range from a low of 1704 mg/l to a high of 2324 mg/l. WVDEP's Guidance classifies sulfate as a "definite stressor" when it exceeds 417 mg/l.

43. In an April 1, 2010 guidance document, EPA stated that “high levels of conductivity, dissolved solids, and sulfates are a primary cause of water quality impairments downstream from mine discharges.” EPA also found that “in-stream conductivity levels above 500 $\mu\text{S}/\text{cm}$ are likely to be associated with adverse impacts to water quality.”

44. On the basis of Fola’s continuing violations of the narrative water quality standards incorporated into its WV/NPDES Permit WV1014005 and the absence of any evidence of any meaningful efforts by Fola to eradicate the cause of the violations, Plaintiffs allege that Fola is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

FIRST CLAIM FOR RELIEF

(Clean Water Act Violations)

45. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 44 supra.

46. Since at least March 2007, Fola’s Surface Mine No. 3 has discharged pollutants from its operations through point sources, i.e., Pond 39 and Outfall 24, into Twentymile Creek and its tributaries, including Boardtree Branch, pursuant to WV/NPDES Permit WV1014005.

47. Twentymile Creek and its tributaries, including Boardtree Branch, are waters of the United States within the meaning of 33 U.S.C. § 1362(7).

48. Since at least March 2007, Fola has discharged, and continues to discharge, pollutants which cause acute and chronic toxicity, ionic stress, and biological impairment in Twentymile Creek and its tributaries, including Boardtree Branch, in violation of West Virginia’s narrative water quality standards for biological integrity and aquatic life protection. 47 C.S.R. §§ 2-3.2.e & 2-3.2.i.

49. The narrative water quality standards for biological integrity and aquatic life protection incorporated by reference into Part C of Fola’s WV/NPDES Permit WV1014005 are

“effluent standards or limitations” for purposes of Sections 505(a)(1) and 505(f)(6) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. §§ 1342, 1365(a)(1), 1365(f)(6).

50. Based on the WET tests, WVSCI score, and measured concentrations of specific conductivity and sulfates in Fola’s discharges, and its failure to take corrective actions to address those conditions, Plaintiffs believe that Fola is in continuing and/or intermittent violation of its WV/NPDES Permit WV1014005 and the CWA.

51. Pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. § 1319(d) and 1365, Fola is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit WV1014005.

52. Fola is subject to an injunction under the CWA ordering it to cease its permit violations.

SECOND CLAIM FOR RELIEF

(SMCRA Violations)

53. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 52 supra.

54. Fola’s WVSCMRA Permit S200995 requires it to comply with performance standards of the WVSCMRA. 38 C.S.R. § 2-3.33(c).

55. Those standards provide that “discharge from areas disturbed by surface mining shall not violate effluent limitations or cause a violation of applicable water quality standards.” 38 C.S.R. § 2-14.5.b.

56. West Virginia water quality standards prohibit discharges of “[m]aterials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life” or that cause “significant adverse impacts to the chemical, physical, hydrologic, or biological

components of aquatic ecosystems.” 47 C.S.R. §§ 2-3.2.e & 2-3.2.i.

57. WVSCMRA performance standards also provide that “[a]ll surface mining and reclamation activities shall be conducted . . . to prevent material damage to the hydrologic balance outside the permit area.” 38 C.S.R. § 2-14.5. “Material damage,” at a minimum, includes violations of water quality standards.

58. By violating West Virginia water quality standards for biological integrity and aquatic life protection at its Surface Mine No. 3, Fola has also violated, and is continuing to violate, the performance standards incorporated as conditions in its WVSCMRA Permit S200995.

59. Each violation of Fola’s WVSCMRA permit is a violation of SMCRA and is enforceable under the citizen suit provision of SMCRA, 30 U.S.C. § 1270(a).

60. Fola is subject to an injunction under SMCRA ordering it to cease its permit violations.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

1. Declaring that Fola has violated and is in continuing violation of the Clean Water Act and SMCRA;
2. Enjoining Fola from operating its facilities in such a manner as will result in further violations of the effluent limitations in WV/NPDES Permit WV1014005;
3. Ordering Fola to immediately comply with the effluent limitations in WV/NPDES Permit WV1014005;
4. Ordering Fola to immediately comply with the terms and conditions of WVSCMRA Permit Number S200995;
5. Ordering Fola to pay appropriate civil penalties up to \$37,500 per day for each

CWA violation;

6. Ordering Fola to conduct monitoring and sampling to determine the environmental effects of its violations, to remedy and repair environmental contamination and/or degradation caused by its violations, and restore the environment to its prior uncontaminated condition;

7. Awarding Plaintiffs their attorney and expert witness fees and all other reasonable expenses incurred in pursuit of this action; and

8. Granting other such relief as the Court deems just and proper.

Respectfully submitted,

/s/ DEREK O. TEANEY

DEREK O. TEANEY (W.Va. Bar No. 10223)

JOSEPH M. LOVETT (W.Va. Bar No. 6926)

Appalachian Center for the Economy and the
Environment

P.O. Box 507

Lewisburg, WV 24901

(304) 645-9006

Counsel for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
SIERRA CLUB and WEST VIRGINIA HIGHLANDS CONSERVANCY, INC.,

(b) County of Residence of First Listed Plaintiff San Francisco, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Derek Teaney, Appalachian Center for the Economy and the Environment,
PO Box 507, Lewisburg, WV 24901, 304-793-9007

DEFENDANTS
FOLA COAL COMPANY, LLC

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

33 U.S.C. s. 1251 et seq.; 30 U.S.C. s. 1201 et seq.

Brief description of cause:

Citizen Enforcement of the Clean Water Act and Surface Mining Control and Reclamation Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/11/2010

/s/ Derek O. Teaney

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



November 15, 2010

Memorandum

To: Regional Directors

From: 
Joseph G. Pizarchuk
Director

Subject: Application of the Ten-Day Notice Process and Federal Enforcement to Permitting Issues Under Approved Regulatory Programs

It has come to my attention that there has been some confusion within the Office of Surface Mining Reclamation and Enforcement (OSM) regarding OSM's oversight and enforcement responsibilities with respect to permitting issues arising under approved state or tribal regulatory programs. The source of confusion appears to be an October 21, 2005, letter decision from a former Assistant Secretary for Land and Minerals Management (the *Mettiki* decision), which called into question OSM's legal authority to conduct oversight and enforcement relative to state or tribal permitting decisions.


Based upon my request for legal advice, the Office of the Solicitor has concluded that section 521(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. § 1271(a), and OSM's Ten-Day Notice (TDN) and pertinent Federal enforcement regulations at 30 CFR Parts 842 and 843, along with the legal precedent interpreting those provisions, authorize OSM to issue TDNs to state and tribal regulatory authorities and take appropriate enforcement actions with respect to alleged violations or violations of permitting requirements. The Solicitor's Office has also determined that this analysis represents a better reading of SMCRA and OSM's implementing regulations than does the *Mettiki* decision, which does not identify or discuss the most relevant statutory and regulatory provisions.

Based upon this legal advice and the authority vested in me as the Director of the Office of Surface Mining Reclamation and Enforcement, and with the concurrence of the Office of the Assistant Secretary for Land and Minerals Management, I am issuing this memorandum, effective immediately, to reject the rationale set forth in the *Mettiki* decision and to reaffirm OSM's historic position on this issue. This guidance clarifies that OSM's TDN and pertinent Federal enforcement regulations at 30 CFR Parts 842 and 843 apply to *all* types of violations, including violations of performance standards or permit conditions and violations of permitting

requirements. This guidance does not alter the case-specific outcome of the previously-decided *Mettika* matter.

In sum, OSM must engage in oversight and enforcement relative to state and tribal permitting issues under section 521(a) of SMCRA and OSM's relevant regulations at 30 CFR Parts 842 and 843. All organizational units of OSM with oversight and enforcement responsibilities with respect to state or tribal regulatory programs are directed to follow the TDN and pertinent Federal enforcement regulations at 30 CFR Parts 842 and 843 and apply them to *all* types of violations, including violations of performance standards or permit conditions and violations of permitting requirements.

I concur:


Sylvia V. Baca
Deputy Assistant Secretary
Land and Minerals Management


Date

**Matthew
Klasen/DC/USEPA/US**
11/19/2010 04:29 PM

To Ann Campbell, Jordan Dorfman
cc Daniel Gerasimowicz, Jim Pendergast, Brian Frazer, Tanya
Code
bcc
Subject Briefing doc for Monday's 3-3:30 stream protection rule
prebrief

Ann / Jordan:

Please see attached for a briefing doc for Monday's stream protection rule prebrief with Bob S. (Dan, if you would, please feel free to add to the calendar invitation when you have a chance -- thanks!)

Best,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

Stream Protection Rule Talking Points v2.docx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Ross
Geredien/DC/USEPA/US
11/19/2010 05:00 PM

To Christopher Hunter, Brian Frazer
cc Brian Topping, Marcel Tchaou
bcc
Subject Leeco WD Technical issues and Talking Points

There are some other considerations that I'd also like to make you guys aware of on Monday.



ATTACHMENT REDACTED - DELIBERATIVE

Ross- Leeco Technical Talking Points.docx

Ross Geredien
ORISE Fellow
EPA Office of Wetlands, Oceans, and Watersheds
202-566-1466
Geredien.ross(AT)epa.gov

**Matthew
Klasen/DC/USEPA/US**
11/22/2010 11:09 AM

To Jim Pendergast, Brian Frazer, Ross Geredien, MichaelG Lee
cc Gregory Peck
bcc
Subject Pre-discussion of stream protection rule -- could we do 1 or 1:30?

Just wanted to see if we can find a time for a quick pre-discussion before our 3 pm with Bob on stream protection rule.

See attached for a summary of outstanding interagency comments that OSM sent along on Friday. This is probably something we should make Nancy and Bob aware of (particularly the EPA section) because Joe will have this for the conversation tomorrow.

Thanks,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

Summary of comments from other agencies 11-02-10.docx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Christopher
Hunter/DC/USEPA/US
11/22/2010 11:33 AM

To CynthiaN Johnson
cc Brian Topping, Palmer Hough, Ross Geredien
bcc
Subject Re: Please send me corrections

Thanks Cynthia, here are some suggestions



ATTACHMENT REDACTED - DELIBERATIVE

Mining Call Agenda 11-16-10 ch.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

CynthiaN Johnson

-- Cynthia N. Johnson Program Analyst

11/22/2010 09:41:17 AM

From: CynthiaN Johnson/DC/USEPA/US
To: Ross Geredien/DC/USEPA/US@EPA, Brian Topping/DC/USEPA/US@EPA, Palmer
Hough/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA
Date: 11/22/2010 09:41 AM
Subject: Please send me corrections

[attachment "Mining Call Agenda 11-16-10.doc" deleted by Christopher Hunter/DC/USEPA/US]

--

Cynthia N. Johnson
Program Analyst
U.S. Environmental Protection Agency
Office of Wetlands, Oceans and Watersheds
Wetlands Division
Johnson.CynthiaN@EPA.gov
Phone: (202) 566-1679
Fax: (202) 566-1349

Mailing Address:
1200 Penn. Ave, NW MC: 4502T
Washington, DC 20460

Matthew
Klasen/DC/USEPA/US
11/22/2010 02:32 PM

To Matthew Klasen
cc Gregory Peck, Jim Pendergast, MichaelG Lee, Ross
Geredien
bcc
Subject Re: Updated draft briefing doc (through issue #2)

And here's a shot at #3 (very long, I know). I've accepted all the previous changes.

mk



ATTACHMENT REDACTED - DELIBERATIVE

Stream Protection Rule Talking Points v3.docx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Matthew Klasen

[Ross and Mike: Not surprisingly, this is taking lo...](#)

11/22/2010 01:33:22 PM

From: Matthew Klasen/DC/USEPA/US
To: Ross Geredien/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA
Cc: Jim Pendergast/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA
Date: 11/22/2010 01:33 PM
Subject: Updated draft briefing doc (through issue #2)

Ross and Mike:

Not surprisingly, this is taking longer than expected. So see attached for a draft that includes updates to the intro and to sections 1 and 2 (everything before the gray section).

I'll continue with section 3 and send it off when it's done. Let me know your thoughts on this initial section when you get a chance. I recognize this is getting long, but they'll need backup tomorrow given that they're not familiar with the actual rule text.

Thanks,
Matt

[attachment "Stream Protection Rule Talking Points v3.docx" deleted by Matthew Klasen/DC/USEPA/US]

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Matthew
Klasen/DC/USEPA/US
11/22/2010 02:56 PM

To: MichaelG Lee
cc: Gregory Peck, Jim Pendergast, Ross Geredien
bcc:
Subject: Re: Updated draft briefing doc (through issue #2)

Thanks Mike.

Greg just encouraged me to cut this down significantly, so here's a very basic one-pager we can use at 3. We can talk through broader issues and figure out what makes most sense for tomorrow.

I'll bring copies.

mk



ATTACHMENT REDACTED - DELIBERATIVE

Stream Protection Rule Background.docx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

MichaelG Lee

My quick thoughts . . . Mike

11/22/2010 02:48:30 PM

From: MichaelG Lee/DC/USEPA/US
To: Matthew Klasen/DC/USEPA/US@EPA
Cc: Gregory Peck/DC/USEPA/US@EPA, Jim Pendergast/DC/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA
Date: 11/22/2010 02:48 PM
Subject: Re: Updated draft briefing doc (through issue #2)

My quick thoughts . . .

[attachment "xxx24.docx" deleted by Matthew Klasen/DC/USEPA/US]

Mike

Michael G. Lee
Office of General Counsel
(202) 564-5486

Matthew Klasen

Ross and Mike: Not surprisingly, this is taking lo...

11/22/2010 01:33:24 PM

From: Matthew Klasen/DC/USEPA/US
To: Ross Geredien/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA
Cc: Jim Pendergast/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA
Date: 11/22/2010 01:33 PM
Subject: Updated draft briefing doc (through issue #2)

Ross and Mike:

Not surprisingly, this is taking longer than expected. So see attached for a draft that includes updates to the intro and to sections 1 and 2 (everything before the gray section).

I'll continue with section 3 and send it off when it's done. Let me know your thoughts on this initial section when you get a chance. I recognize this is getting long, but they'll need backup tomorrow given that they're not familiar with the actual rule text.

Thanks,
Matt

[attachment "Stream Protection Rule Talking Points v3.docx" deleted by MichaelG Lee/DC/USEPA/US]

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Matthew
Klasen/DC/USEPA/US
11/22/2010 05:12 PM

To CynthiaN Johnson

cc Amy Newbold, Ann Campbell, Ben Ghosh, Beth Walls, Bharat Mathur, Bob Sussman, Brian Frazer, Brian Topping, Bridget Staples, Caroline Whitehead, Chad Harsh, Chris Thomas, Christopher Hunter, Cliff Rader, Daniel Holliman, Darren Reid, David Evans, Denis Borum, Denise Keehner, Duncan Powell, Elaine Suriano, Eric Somerville, Evelyn MacKnight, Georgia Bednar, Grace Robiou, Gregory Peck, Janice Donlon, Jeffrey Lapp, Jessica Martinsen, Jim Giattina, John Forren, John Pomponio, Jon Capacasa, Jordan Dorfman, Justin Wright, Karyn Wendelowski, Kevin Minoli, Kevin Pierard, Larinda Tervelt, Larry Long, Mahri Monson, Marcus Zobrist, Mark Nuhfer, Melissa Raack, Michael Dunn, Michael Slimak, MichaelG Lee, Naimah Karim, Nanci Gelb, Nancy Stoner, Palmer Hough, Peter Silva, Peter Swenson, Philip Mancusi-Ungaro, Rebecca Cover, Robert Klepp, Rosemary Hall, Ross Geredien, Sharmin Syed, Shawn Garvin, Stan Meiburg, Stefania Shamet, Stephanie Fulton, Susan Cormier, Susan Hansen, Susan Norton, Tanya Code, Timothy Landers, Tinka Hyde, Todd Bowers, Tom Laverty, Tom Marshall, Tom Welborn, Wendy Melgin, William Early

bcc

Subject Re: Mining Call Agenda for 11-23-10

Hi everyone,

In support of the agenda item referencing Ohio, please see attached for a preliminary draft analysis conducted by ORD on applying the conductivity benchmark in Ohio. This agenda item will be covered primarily by ORD, not Region 5.

Best,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

Discussion Ohio 20101118-reg5.docx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

CynthiaN Johnson Please find the attached agenda. Thanks,

11/22/2010 05:02:23 PM

From: CynthiaN Johnson/DC/USEPA/US
To: Ann Campbell/DC/USEPA/US@EPA, Ben Ghosh/R4/USEPA/US@EPA, Beth Walls/R4/USEPA/US@EPA, Bharat Mathur/R5/USEPA/US@EPA, Bob Sussman/DC/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Chris Thomas/R4/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA, Daniel Holliman/R4/USEPA/US@EPA, Darren Reid/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA, Denis Borum/DC/USEPA/US@EPA, Denise Keehner/DC/USEPA/US@EPA, Duncan Powell/R4/USEPA/US@EPA, Evelyn MacKnight/R3/USEPA/US@EPA, Georgia Bednar/DC/USEPA/US@EPA, Grace Robiou/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Janice Donlon/R3/USEPA/US@EPA, Jeffrey Lapp/R3/USEPA/US@EPA, Jim Giattina/R4/USEPA/US@EPA, John Forren/R3/USEPA/US@EPA,

John Pomponio/R3/USEPA/US@EPA, Jon Capacasa/R3/USEPA/US@EPA, Jordan Dorfman/DC/USEPA/US@EPA, Justin Wright/DC/USEPA/US@EPA, Karyn Wendelowski/DC/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA, Kevin Pierard/R5/USEPA/US@EPA, Larinda Tervelt/R4/USEPA/US@EPA, Mahri Monson/DC/USEPA/US@EPA, Marcus Zobrist/DC/USEPA/US@EPA, Mark Nuhfer/R4/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA, Melissa Raack/DC/USEPA/US@EPA, Michael Dunn/R3/USEPA/US@EPA, Michael Slimak/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Naimah Karim/R5/USEPA/US@EPA, Nanci Gelb/DC/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@EPA, Palmer Hough/DC/USEPA/US@EPA, Peter Silva/DC/USEPA/US@EPA, Peter Swenson/R5/USEPA/US@EPA, Philip Mancusi-Ungaro/R4/USEPA/US@EPA, Rebecca Cover/R4/USEPA/US@EPA, Robert Klepp/DC/USEPA/US@EPA, Rosemary Hall/DC/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA, Shawn Garvin/R3/USEPA/US@EPA, Stan Meiburg/R4/USEPA/US@EPA, Stefania Shamet/R3/USEPA/US@EPA, Stephanie Fulton/R4/USEPA/US@EPA, Susan Cormier/CI/USEPA/US@EPA, Susan Norton/DC/USEPA/US@EPA, Tanya Code/DC/USEPA/US@EPA, Timothy Landers/R6/USEPA/US@EPA, Tinka Hyde/R5/USEPA/US@EPA, Todd Bowers/R4/USEPA/US@EPA, Tom Lavery/DC/USEPA/US@EPA, Tom Welborn/R4/USEPA/US@EPA, Wendy Melgin/R5/USEPA/US@EPA, William Early/R3/USEPA/US, Elaine Suriano/DC/USEPA/US@EPA, Caroline Whitehead/DC/USEPA/US@EPA, Amy Newbold/R4/USEPA/US@EPA, Brian Topping/DC/USEPA/US@EPA, Bridget Staples/R4/USEPA/US@EPA, Eric Somerville/R4/USEPA/US@EPA, Chad Harsh/R3/USEPA/US@EPA, Jessica Martinsen/R3/USEPA/US@EPA, Susan Hansen/R4/USEPA/US@EPA, Tom Marshall/DC/USEPA/US@EPA, Larry Long/R4/USEPA/US@EPA

Date: 11/22/2010 05:02 PM
Subject: Mining Call Agenda for 11-23-10

Please find the attached agenda.

Thanks,
Cynthia[attachment "Mining Call Agenda 11-23-10.doc" deleted by Matthew Klasen/DC/USEPA/US]

--

Cynthia N. Johnson
Program Analyst
U.S. Environmental Protection Agency
Office of Wetlands, Oceans and Watersheds
Wetlands Division
Johnson.CynthiaN@EPA.gov
Phone: (202) 566-1679
Fax: (202) 566-1349

Mailing Address:
1200 Penn. Ave, NW MC: 4502T
Washington, DC 20460

**Matthew
Klasen/DC/USEPA/US**

11/22/2010 05:20 PM

To Gregory Peck, Jim Pendergast, Ross Geredien, MichaelG
Lee

cc Brian Frazer, Christopher Hunter, Kevin Minoli

bcc

Subject OK adding this draft to the invite for tomorrow's stream
protection rule meeting?

Per Greg's advice after our pre-discussion this afternoon, I cut down the stream protection rule handout to the following.

Based on his feedback, I think this better fits the document we'll want to provide for tomorrow's meeting with Joe. Given that, please let me know if you have any concerns adding this to the calendar invitation for tomorrow's meeting along with the seven-page handout OSM gave us.

Thanks,
Matt



ATTACHMENT REDACTED - DELIBERATIVE

Stream Protection Rule Background.docx

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

Jaclyn
McIlwain/R3/USEPA/US
11/22/2010 05:23 PM

To Evelyn MacKnight
cc
bcc
Subject Alex Energy Interim Obj as Time Extension

Evelyn,

The draft permit for WV1024370 Alex Energy - Enduring Freedom Surface Mine was received on July 29, 2010. Due to elevated conductivity, sulfates, and TDS, an interim objection was issued on August 25th, **27 days** after receipt. The WV 1982 MOA states that:

"...if the information provided is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA..." EPA can request any portion of the record determined "necessary for review."

"If this request is made within thirty (30) days of receipt... **it shall constitute an interim objection** to the issuance of the permit and the **full period** of time specified (**90 days**) shall be allowed..."

In this case, the clock was paused at **27 days**, and the interim objection served as a time extension to the full 90 day review. EPA received the additional information on November 1, 2010, serving to start the clock again.

According to the MOA, we now have **90 days** to review the permit, **minus** the time we used to issue the interim objection (90 - 27 = 63). We are now left with **63 days** to review the additional information.

63 days from November 1, 2010 is January 3, 2011.

Attached you will find the drafted letter acknowledging receipt of the additional information, and also pointing out the information that they have failed to provide.



ATTACHMENT REDACTED - DELIBERATIVE

WV1024370 Alex Energy- Enduring Freedom Surface Mine - DRAFT response to addtnl info.doc

Summary Timeline:

July 29 - draft permit receipt

Aug 25 - interim objection issued (clock paused at 27 days)

Nov 1 - additional information received (clock starts again with 63 days left)

Thanks,

Jaclyn McIlwain
NPDES Permits Branch (3WP41)
Water Protection Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Ph: 215.814.2713
Fax: 215.814.2302
mcilwain.jaclyn@epa.gov

Mark Douglas/R3/USEPA/US

11/24/2010 02:18 PM

To Jessica Martinsen, Jeffrey Lapp

cc

bcc

Subject Doe Branch 3b Draft

Jessica,

Attached is the draft Doe Branch 3b letter. By my count the letter should be sent COB December 7th. Please feel free to double check my count.



Doe Branch 3a Final.doc



Doe Branch Surface Mine EPA Comments.pdf



Doe Branch Surface Mine 3b.doc

Thanks,

ATTACHMENTS REDACTED - DELIBERATIVE

Mark Douglas
Environmental Assessment and Innovation Division
US EPA Region 3
3EA30
1650 Arch St
Philadelphia, PA 19103
215-814-2767

Matthew
Klasen/DC/USEPA/US
11/26/2010 02:41 PM

To: Jim Pendergast
cc
bcc
Subject: Re: FYI: Key conclusions from OSM's draft stream protection rule reg impact analysis

Hi Jim,

(b) (5) [REDACTED]

[REDACTED]

[REDACTED]

Thanks,
Matt

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

-----Jim Pendergast/DC/USEPA/US wrote: -----

To: Matthew Klasen/DC/USEPA/US@EPA
From: Jim Pendergast/DC/USEPA/US
Date: 11/26/2010 02:03PM
Subject: Re: FYI: Key conclusions from OSM's draft stream protection rule reg impact analysis

(b) (5) [REDACTED]

Matthew Klasen---11/26/2010 12:29:43 PM---Hi everyone,

Fro Matthew Klasen/DC/USEPA/US
m:

To: Gregory Peck/DC/USEPA/US@EPA, Jim Pendergast/DC/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA, Timothy Landers/DC/USEPA/US@EPA, Elaine Suriano/DC/USEPA/US@EPA, Justin Wright/DC/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Sharmin Syed/DC/USEPA/US@EPA, Js Wilson/DC/USEPA/US@EPA, Denise Keehner/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA

Date: 11/26/2010 12:29 PM

Re:

Subject: FYI: Key conclusions from OSM's draft stream protection rule reg impact analysis

:

Hi everyone,

(b) (5)



- 
- 
- 
- 
- 
- 



(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Matt Klasen

U.S. Environmental Protection Agency

Office of Water (IO)

202-566-0780

cell (202) 380-7229[attachment "Key Elements of OSM Reg Impact Analysis.pdf" deleted by

Jim Pendergast/DC/USEPA/US]



- OSM Regulatory Impact Analysis.101610.pdf

ATTACHMENT REDACTED - DELIBERATIVE

**Stefania
Shamet/R3/USEPA/US**

11/27/2010 10:04 AM

To Christopher Hunter

cc Margaret Passmore, Mazzarella.Christine, Regina Poeske

bcc

Subject Spruce -- cumulative impacts

Chris-- Attached please find the latest iteration of the cumulative impact section with my remaining comments incorporated. I think my comments do reflect concerns, but frankly, I may have read this too many times. I suggest you work directly with Christine Mazzarella on incorporating this. Thanks.

ATTACHMENT REDACTED - DELIBERATIVE



Cumulative Impacts_10Nov2010.doc

**Christopher
Hunter/DC/USEPA/US**
11/28/2010 11:39 PM

To hunter.christopher
cc
bcc
Subject Spruce

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454

hunter.christopher@epa.gov
112810.doc



- Cumulative Impacts_10Nov2010.doc



- Spruce FD

ATTACHMENTS REDACTED - DELIBERATIVE

**Christopher
Hunter/DC/USEPA/US**
11/28/2010 11:40 PM

To hunter.christopher
cc
bcc
Subject Cumulative effects appendix

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454

hunter.christopher@epa.gov



- Cumulative Impacts_27Nov2010.doc

ATTACHMENT REDACTED - DELIBERATIVE

Christopher
Hunter/DC/USEPA/US
11/29/2010 08:24 AM

To Ross Geredien
cc
bcc
Subject Spruce draft FD in need of some citations

Ross,
here is the latest and greatest draft. Can you please try to track down the remaining missing citations and references? I've got flags on:

- page 35
- page 60
- page 63
- page 73
- page 75

Also, on page 62, (b) (5)

[REDACTED]

If you have any questions, check with Brian or Palmer on the issue.

Thanks



ATTACHMENT REDACTED - DELIBERATIVE

Spruce FD 112810.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

Christopher
Hunter/DC/USEPA/US

11/29/2010 10:11 AM

To Matthew Klasen

cc

bcc

Subject Fw: Leeco-Stacy Branch Check-In

I sent this email to today's meeting invitees, but forgot to include the meeting organizer. Attached is a quick overview other other projects Denise asked us to prepare.

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

----- Forwarded by Christopher Hunter/DC/USEPA/US on 11/29/2010 10:10 AM -----

From: Christopher Hunter/DC/USEPA/US
To: Beth Walls/R4/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Brian Topping/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA, Cliff Rader/DC/USEPA/US@EPA, Duncan Powell/R4/USEPA/US@EPA, Heinz Mueller/R4/USEPA/US@EPA, Jeffrey Lapp/R3/USEPA/US@EPA, Jessica Martinsen/R3/USEPA/US@EPA, Kevin Minoli/DC/USEPA/US@EPA, KevinH Miller/R4/USEPA/US@EPA, MichaelG Lee/DC/USEPA/US@EPA, Philip Mancusi-Ungaro/R4/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA, Tom Welborn/R4/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Jim Giattina/R4/USEPA/US@EPA, John Pomponio/R3/USEPA/US@EPA, Jim Pendergast/DC/USEPA/US@EPA
Date: 11/29/2010 10:10 AM
Subject: Leeco-Stacy Branch Check-In

This comparison of mining projects and recommendations by EPA may be helpful for this afternoon's discussion on Leeco.

Chris



ATTACHMENT REDACTED - DELIBERATIVE

Leeco comparisons_v3.xlsx

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

Christopher
Hunter/DC/USEPA/US
11/29/2010 10:14 AM

To CynthiaN Johnson
cc Brian Topping, Ross Geredien, Timothy Landers
bcc
Subject Re: Mining call agenda edits?

Not much going on, that I'm aware of, so I took out several items.
Thanks



ATTACHMENT REDACTED - DELIBERATIVE

Mining Call Agenda 11-30-10 ch.doc

Chris Hunter
U.S. Environmental Protection Agency
Office of Wetlands, Oceans, & Watershed
(202) 566-1454
hunter.christopher@epa.gov

CynthiaN Johnson	Edits?-- Cynthia N. Johnson Program Analyst	11/29/2010 10:08:17 AM
------------------	---	------------------------

From: CynthiaN Johnson/DC/USEPA/US
To: Brian Topping/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA, Timothy Landers/DC/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA
Date: 11/29/2010 10:08 AM
Subject: Mining call agenda edits?

Edits?[attachment "Mining Call Agenda 11-30-10.doc" deleted by Christopher Hunter/DC/USEPA/US]

--

Cynthia N. Johnson
Program Analyst
U.S. Environmental Protection Agency
Office of Wetlands, Oceans and Watersheds
Wetlands Division
Johnson.CynthiaN@EPA.gov
Phone: (202) 566-1679
Fax: (202) 566-1349

Mailing Address:
1200 Penn. Ave, NW MC: 4502T
Washington, DC 20460

Cynthia
Giles-AA/DC/USEPA/US
Sent by: Linda Huffman

11/29/2010 03:31 PM

To rock.salt
cc Ainka Hyde, barbara.cassady, Beers.Samantha, Bill Jenkins, Brian Frazer, bwinters, Christopher Hunter, david.b.olson, dhartos, Gregory Peck, Heather Case, Heinz Mueller, Kenneth Westlake, Lisa Garcia, Matt Bogoshian, mthompson, pmcilwain, srideout, Suzi Ruhl, tammy.r.fudge, Tom Marshall, tshope, yong.j.chung
bcc Nancy Stoner
Subject MTM Cumulative Impacts Meeting

Meeting

Date 12/13/2010
Time 12:30:00 PM to 03:00:00 PM
Chair Cynthia Giles-AA
Invitees
Required chip.smith; Christy_JohnsonHughes; Cliff Rader; Dave_Stout; John Pomponio; Lauren_D._Leuck; Matt Bogoshian; Matthew Klasen; mboots; mccabe.catherine; rock.salt; Susan Bromm
Optional barbara.cassady; Beers.Samantha; Bill Jenkins; Brian Frazer; bwinters; Christopher Hunter; david.b.olson; dhartos; Doreen Cantor; Gregory Peck; Heather Case; Heinz Mueller; Kenneth Westlake; Kyndall Barry; Lisa Garcia; mthompson; pmcilwain; srideout; Suzi Ruhl; Tammy.R.Fudge; Tinka Hyde; Tom Marshall; tshope; Yong.J.Chung
FYI
Location EPA Headquarters, 1200 Pennsylvania Avenue, N.W., Washington, D.C., Room 3216 Ariel Rios South Building



ATTACHMENT REDACTED - DELIBERATIVE

MTMCumulative Effects Proposal_description12_8_10 final.docx

As agreed to on the Principals conference call last week, we are expanding the schedule for our upcoming December 13 meeting to allow time for more detailed discussions about our work on cumulative impact assessment (new time: 12:30 pm - 3:00 pm).

We also agreed that each agency (EPA, COE, OSM) will circulate a short outline by December 8 of what methodology/approach they are working on (5 pages or less would be best), a schedule for what is proposed to be accomplished, and how the methodology/approach will be used.

At the December 13 meeting, both Principals and staff will attend; the meeting will start with 15 minute summaries from each of the three agencies, followed by clarifying questions.

(b) (5)

Please confirm your attendance for the meeting with Linda Huffman at Huffman.Linda@epa.gov or 202-564-2440.

**Carmen
Vitanza/R3/USEPA/US**
11/30/2010 07:19 AM

To Greg Pond
cc Jessica Martinsen
bcc
Subject Hobet45 Mining Data dated 10/15/2010

Hi Greg,

Attached you find the Hobet45 data for Patriot Mining dated 10/15/2010 this was the last file I recived from Hobet.



ATTACHMENT REDACTED - DELIBERATIVE

HOBET45_20101015.xls

Carmen W. Vitanza, Jr.
SEE Project/U.S. EPA Region III
Office of Environmental Programs
1650 Arch Street (3EA30)
Philadelphia, PA. 19103
Information System Specialist
215-814-2754 phone
215-814-2783 fax
EPA/SEE-EAID Division

Matthew
Klasen/DC/USEPA/US
11/30/2010 09:00 AM

To Gregory Peck
cc
bcc
Subject Fw: Discussion about KY Letter

Hey Greg,

He's right about the overlap between the R5 meeting and this call. Attached are Stef's comments.

mk



ATTACHMENT REDACTED - DELIBERATIVE

letter responding to KY questions 11-9-10sds.doc

Matt Klasen
U.S. Environmental Protection Agency
Office of Water (IO)
202-566-0780
cell (202) 380-7229

----- Forwarded by Matthew Klasen/DC/USEPA/US on 11/30/2010 08:59 AM -----

From: Stan Meiburg/R4/USEPA/US
To: Gregory Peck/DC/USEPA/US@EPA
Cc: Early.William@epamail.epa.gov, Kevin Minoli/DC/USEPA/US@EPA, Matthew Klasen/DC/USEPA/US@EPA, Jim Giattina/R4/USEPA/US@EPA, Suzanne Rubini/R4/USEPA/US@EPA
Date: 11/30/2010 08:57 AM
Subject: Re: Discussion about KY Letter

Greg, et al., I have a strong sense that I have been sent a copy of the Region 3 comments on the KY letter but I can't find them and so am not sure how to respond. Could you send a copy to me?

Also, there is some confusion here about the alignment of conference calls. As I understand it, (and I'm sure I'm confused), there is the one you are setting up on this topic (I think), one scheduled for 4:00 today on Region 5's conductivity limit, and one scheduled for tomorrow morning with attorneys to talk about 402 objections. Greg, you had proposed a call for 4:00 today with me and Bill; but that conflicts with the Region 5 conductivity call, and I'd countered with a proposal to talk between 5:00 and 6:00. Do I have this right?

Stan

A. Stanley Meiburg
Deputy Regional Administrator
EPA Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

Office: (404) 562-8357
Fax: (404) 562-9961
Cell: (404) 435-4234
Email: meiburg.stan@epa.gov



Healthier Families, Cleaner Communities, A Stronger America
<http://www.epa.gov/40th>

Gregory Peck

Stan/Bill: Does 4:00pm tomorrow work OK for yo...

11/29/2010 01:33:36 PM

From: Gregory Peck/DC/USEPA/US
To: Stan Meiburg/R4/USEPA/US@EPA, Early.William@epamail.epa.gov
Cc: Matthew Klasen/DC/USEPA/US@EPA, Kevin Minoli
Date: 11/29/2010 01:33 PM
Subject: Discussion about KY Letter

Stan/Bill:

Does 4:00pm tomorrow work OK for you to talk about the KY response? I saw some edits to the draft R4 letter sent by Steph Shamet - do those generally look OK to R4?

Thanks,
Greg

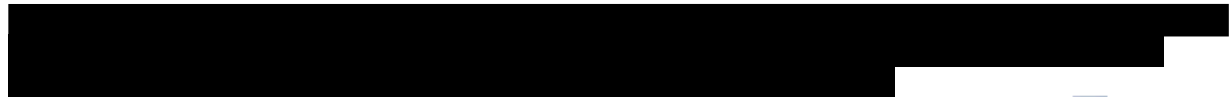
Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency

Christopher
Hunter/DC/USEPA/US
11/30/2010 09:03 AM

To Brian Topping
cc
bcc
Subject long term action item on mining

DON'T DELETE THIS JUST BECAUSE IT SAYS "LONG TERM"

(b) (5)



Surface Coal Mining MOU Factsheet 5-12-10.doc EPA Activities MtTop Mining 021510 update.doc Final Draft Q and A June1009.doc



LPJ MtTop Mining Briefing Outline de021510.doc Mining Briefing_OA Summary v2.doc

Thanks

ATTACHMENTS REDACTED - DELIBERATIVE

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